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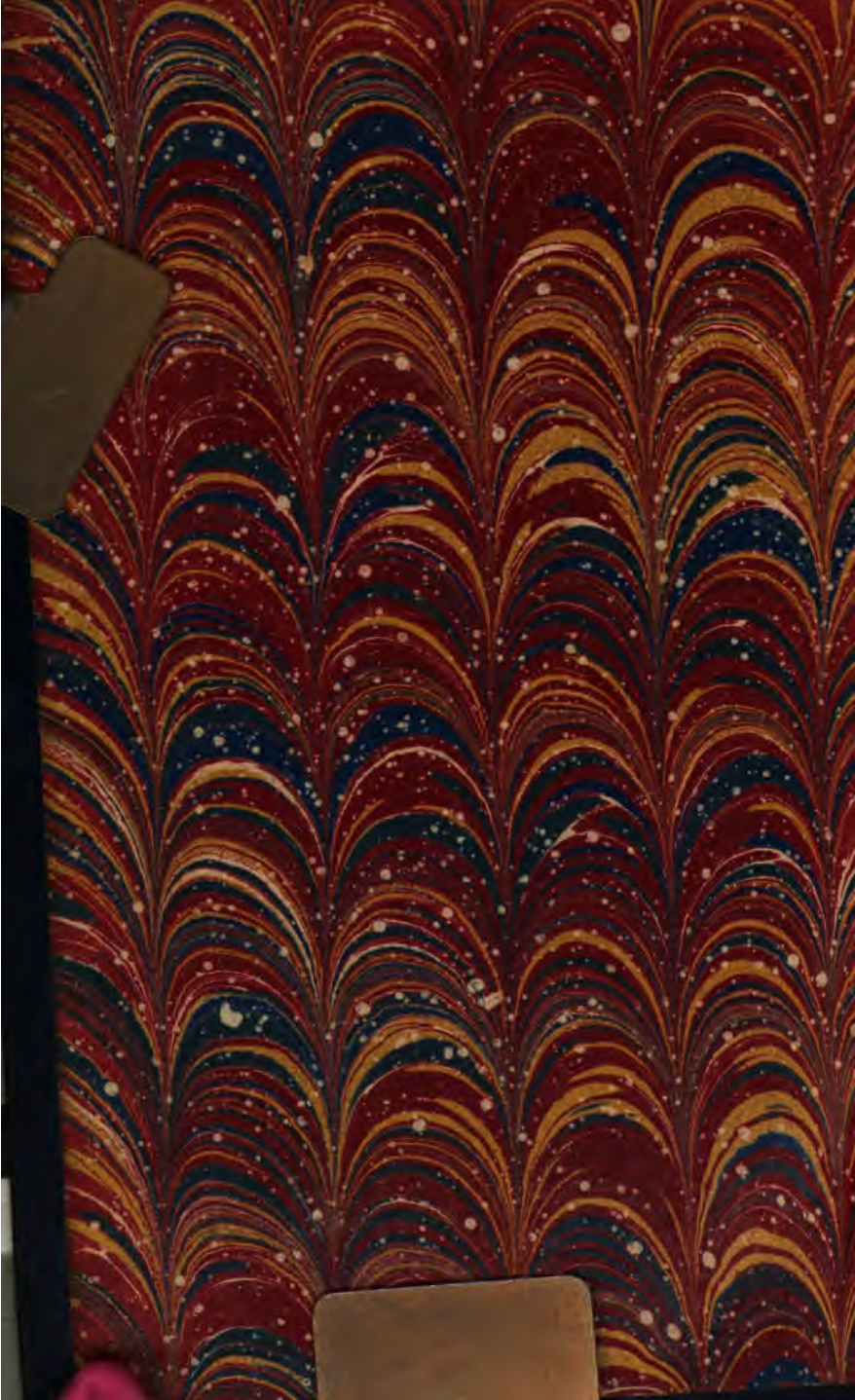
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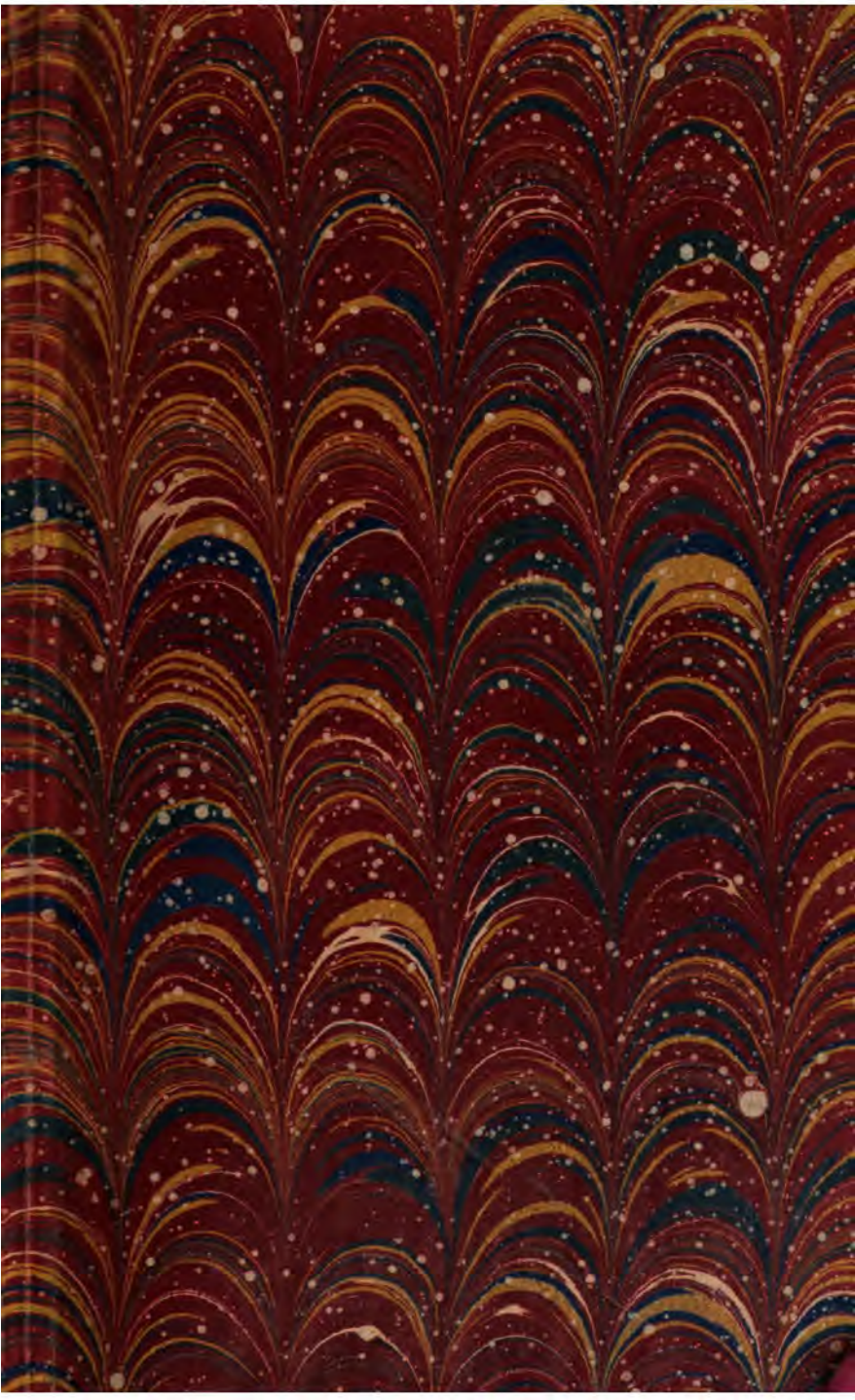
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The British Commonwealth :

or a

Commentary

on the

Institutions and Principles of British Government.

by

HOMERSHAM COX, M.A.,

*Fellow of the Cambridge Philosophical Society, Barrister-at-Law, and Author
of Treatises on the Differential and the Integral Calculus.*

"The Laws of England are the Birthright of the People thereof."

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INTRODUCTION.

I PURPOSE to consider in the following pages the constitutional Principles of the British Government, its Functions, and the Institutions by means of which they are discharged.

Of a subject so extensive, weighty, and difficult, I cannot hope to do more than exhibit a general view ; and, by indicating the most important objects of inquiry, and their mutual relations, furnish aid to its more complete investigation. The number of treatises in which the abstract principles of government and its form in England are discussed, is very great ; yet the social relations of the different parts of the community have been so much altered since most of those treatises were written, that they give but little information of the present practical working of our Constitution. The extension of trade and commerce, the increase of wealth and population, the improve-

ments of art and science, and the diffusion of general knowledge, have had the effect of almost remodelling society within the period of recent history, and have introduced difficulties and complexities of legislation which were neither known to, nor anticipated by, the most celebrated writers, who have considered the ancient political institutions of this nation. Of no country is the literature more rich than ours in works, which treat with admirable freedom and perspicuity of the science of government, and in treatises which state, with great learning and research, the nature and history of our constitutional laws ; but respecting a large part of the vast and complicated machinery, by which, in modern times, the laws are established and executed, there are but few sources of general information. After careful inquiry, I have been unable to discover any book in which the modern principles of the British Constitution are systematically discussed and elucidated by reference to the actual state and numerous institutions of our Government.

The need of such a work was, perhaps, never more apparent than at the present time, when political measures engage more general dispassionate attention than they ever received heretofore ; and, happily,

are discussed with a freedom from controversial asperity, which augurs well for their wise and impartial consideration. The great object of the present work is to show that our Government is, indeed, as I have, by the sanction of law and history, designated it—a COMMONWEALTH ; that the several members of the community are bound together by common interests ; that politics, rightly considered, are not a conflict of separate interests, but a harmony of them ; that the Christian doctrines of peace and goodwill are as potent in civil affairs as in religion ; that in a Christian state, as in a Christian church, *there should be no schism in the body ; but that the members should have the same care one for another ; and whether one member suffer, all the members suffer with it ; or one member be honoured, all the members rejoice with it.*

In the divisions of this work, the arrangement indicated by Locke, in his Treatises on “Government,” has been partially followed. He divides all government into three parts—the *Legislative*, the *Executive*, and the *Federative* powers. The two latter powers are usually united ; yet, he remarks, they are really distinct : “ the one comprehending the execution of the

municipal laws of the society *within* itself upon all that are parts of it; the other, the management of the *security and interest* of the public *without*, with all those that it may receive benefit or damage from.* The federative branch of government, to which Locke refers, has been in the following pages divided into two—*International* and *Colonial*. In both these branches of government, as well as in domestic government, there are legislative and executive functions; for it is obvious that the supreme legislature may and does, in many respects, define by laws the relations between this country and her colonies and foreign countries. I have adopted, in another respect, the arrangement of Locke, by commencing with an inquiry respecting the duties and rights of government; for, until these be defined, all discussions respecting the value of any of its laws and institutions are necessarily inconclusive.

The functions of domestic Government have been here distributed under the heads of Legislature, Judicature, and Administration.† Under the first head

* Locke, "Two Treatises on Government." 1688. Ch. xii.

† This division is that adopted by Aristotle in his *Politics*, in which he makes Government consist of three parts,—τὸ βουλευόμενον—τὸ περὶ τὰς ἀρχὰς—τὸ δικάζον.

have been considered not only the legislative powers formally recognised by law, but also the various legislative influences of Political Parties, Commissions of Inquiry, the Press, and Public Opinions. Some space is also devoted to the investigation of the principles of representative government.

The nature of the tribunals, by which the laws are judicially enforced, is next considered, and a slight notice, which the elucidation of the subject required, is given of the distinctions between the different kinds of law administered in England.

Administrative offices have been here distinguished into two kinds—those instituted by Royal prerogative, and those which derive most of their power from Acts of Parliament. The latter include numerous Boards, created to meet modern exigencies of Government, and many institutions of local government. The consideration of the functions of the ancient offices of State includes a brief investigation of the nature of Royal prerogative, and the value and efficiency of monarchical institutions.

The operation of the machinery by which the foreign relations of this country are established and regulated is next made the subject of inquiry ; and by reference

to eminent constitutional authorities I have endeavoured to explain some of the fundamental principles of international government.

The vast magnitude of the British colonies, and the different degrees of civilization among their inhabitants, render the subject of their government one of extreme complexity. I have contented myself with a very succinct account of the nature of the government of the principal British colonies, and of their political relations with the Government of England.

This work concludes with a review of the chief topics considered in the course of it, and a very earnest endeavour to sum up fairly the merits of the constitutional government of that country whose proud title is, in the words of one* of the most illustrious defenders of its liberties, "the MORNING STAR WHICH HAS ENLIGHTENED EUROPE."

* Erskine, 7 Parl. Deb., 807.

The British Commonwealth.

CHAPTER I.

THE DUTIES OF GOVERNMENT.

THE foundations of civil government are in those principles of human nature which instigate men to associate together, and to rely on each other for counsel and protection. It is not good that man should be alone. By the instinct of his nature he is led to seek the society of his fellows, and to combine with them to form families and nations. They who are most impatient of restraint—the wildest children of the desert, whose unconquerable love of freedom is manifested in their nomade habits, yet congregate in tribes, though in them of all mankind Nature exhibits herself most exempt from the influences of society and the arts of civilization. Among a primitive people, the misanthrope and the hermit are not to be found ; for men are driven into solitudes by fanati-

cism and hypochondria ; and these are social abortions.

But besides the natural instincts which induce the gregarious condition of mankind, there are other motives of like effect which experience begets. It is soon discovered that material wealth may be increased by co-operation, and that by a division of employments men greatly multiply their individual powers of converting natural products to their own use. It is to this principle of enhancing the value of labour by division and distribution that we must attribute every manifestation of national magnificence. The world has from the beginning been possessed by two distinct classes of men—those who mutually divided their labours, and those who trusted to their individual exertions ; and these classes might be otherwise designated as the *historical* and the *unhistorical*. For, of the latter, generations after generations have passed away, from the beginning of time until now, and there is scarce any trace of their existence, and none of their social improvement. But the former are the great nations of the earth. Their mighty monuments, which this generation looks upon with wonder and admiration, which have baffled the fury of tempest, the violence of war, and the might of time, are no other than the works of artificers, who in strength and skill exceeded not our own. And not only in monumental works, but

in arts that contribute to the welfare of all the members of a community, are evidenced the benefits of social division of labour. The arts whereby man has made fire, flood, and earth, "the vassals of his will," the arts whereby all participate most abundantly in the wealth of nature, are essentially of social growth.

In order that there may be co-operation of labour there must be *Civil Government*. To the labourer there must be reasonable security that he shall participate in the fruit of the common labour; he that sows must have legitimate assurance that he shall also reap. This, then, is the great economical purpose of government—by the protection of individual rights to promote the wealth of the whole community. But above all, and including all, the secular purposes of government are its moral behests. The highest and noblest end of civilization is the inculcation of moral truth. It is not enough that men be secured unmolested in the rightful enjoyment of personal freedom; it is not enough that by skilfully-adjusted laws they should be enabled to augment their material prosperity by mutual co-operation. If they were created but to enjoy for a few brief years the beneficence of nature, and so end, all the purposes of civil society would be comprised in the promotion of their temporal welfare. But man has higher functions than those of animal existence, nobler instincts than the

association of kindred ; sympathies which territory does not circumscribe, associations which time does not limit. Has government nothing to do with those higher functions, that nobler instinct, that boundless sympathy, those aspirations infinite ?

God setteth the solitary in families. If we reflect rightly on the nature of man's being, and the wonderful harmonies which pervade the moral and physical world, we cannot fail to perceive that Society is thus divinely constituted, not merely for the sake of physical life, but for the purposes also of a life beyond life. Thus regarded in its highest relations, the science of government infinitely transcends all others in its importance. Let us, however, content ourselves here with a lower view of it, and consider merely its temporal value.

The definition of the objects of government most frequently and vehemently urged in modern times is, that this object is "the greatest happiness of the greatest number." The principle so enunciated was adopted by Dr. Priestley in 1768, in his "Essay on Government ;" and subsequently Mr. Jeremy Bentham was engaged, during a large part of his life, in the incessant defence and amplification of this principle, which he otherwise expressed as "the greatest possible happiness of the greatest possible number." Yet the phrase is so confused that it will not bear analysis, much less can be applied as an exact test to

discriminate when a particular action is within or beyond its proper province of government. I have in vain endeavoured to fix on the different members of the phrase meanings which would render the whole consistent. The proposition evidently refers to some system of apportionment of happiness, and the greatest possible number amongst whom it could be distributed in the whole community; whereas the number among whom the greatest possible happiness (unless a forced interpretation be given to that expression) could be distributed, is clearly only a very small part of the community.

Mr. Bentham, in one of his many works in which he insists on this principle,* designates it as the "principle of utility," and states that he brought it to view as "an all-comprehensive and all-commanding" principle; but his commentators have stated that he subsequently modified it. In an Introduction to Bentham's Works, by Mr. Burton,† it is observed, that as, from the existence in the proposition, of "two conflicting elements of extent—the intensity of the happiness, and the number of persons among whom it is distributed—the respective limits of it could not be fixed, the simple expression 'the greatest happiness' was determined on." Dr. Bowring states,‡ that the

* "Introduction to the Principles of Morality and Legislation."

† Bentham's works, by Bowring; Edinburgh, 1843.

‡ "Deontology," p. 328.

phrase "greatest happiness of the greatest number," appeared to Bentham, in his latter years, on closer scrutiny, to be "wanting in that clearness and correctness which had originally recommended it to his notice."

It is to be regretted that a writer, who devoted his life to the often acrimonious and always positive assertion of a principle which he considered "all-comprehensive and all-commanding," did not discover, until the close of his labours, that the principle was "wanting in that clearness and correctness which" (his editor inconsistently remarks) "originally recommended it to his notice." Occasional errors are the infirmities of the most logical minds; but an accurate reasoner is rarely occupied for years in the ostentatious promulgation of a formula devoid of meaning.

Colonel Thompson, in his works,* remarks that the latest improvement of Bentham's principle was "to dismiss the superfluous 'greatest number,' and declare that the just object of politics and morals is simply 'the greatest happiness.' In this manner the magnificent proposition emerges clearly and disentangled of its accessory." But though disentangled of its accessory, and, notwithstanding its "magnificence," the proposition does not "emerge clearly." To understand what is meant by the greatest happi-

* Vol. I. p. 136.

ness being the proper end of government, we must know what is meant here by "happiness;" and Mr. Bentham tells us that in the present case he intends "benefit, advantage, pleasure, or happiness," to be equivalent.* Now, all these things are qualities, not quantities, and, therefore, to speak of the *greatest* amount of them is to subject to the rules of quantity, things which are not susceptible of measurement, or of which, at least, no unit of measurement has been assigned. When, therefore, with a considerable parade of philosophical precision, he proceeds to define the interest of the community to be "the SUM of the interests of the several members who compose it,"† it seems manifest that he falls into the not uncommon error of confounding quantitative and qualitative analysis.

Unless, then, a measure of happiness be assigned, the "greatest-happiness principle," as it is called, appears to teach no more than that the end of government is "the public good," "the general interest," or "the welfare of the community," phrases which have been in universal use among political writers from the earliest to the latest, and which, if not absolutely precise, are often sufficiently so for the occasions on which they are employed.

* "Introduction to the Principles of Morals and Legislation," Chap. i. § iii.

† Ibid. § iv.

It seemed desirable to make these few remarks on the principle advocated by Mr. Bentham, not so much on account of its intrinsic importance, as of the importunate zeal with which it has been proclaimed, and the number of political writers who have made use of it.

Locke, in his "Treatises on Government,"* considers that the great and chief end of men's uniting themselves into commonwealths, and putting themselves under government, is the preservation of their property. This certainly is a chief object of government; it does not, however, include all those duties which, by universal consent, a government may properly undertake. For example, the supreme authority of the State is frequently interposed to compel the sale of land for public roads. Now, by the law of England, a man who has the fee-simple of land has usually absolute dominion over it; yet, for public purposes, he may be properly deprived of that dominion. The interference of government consists here of two parts,—*firstly*, it compels the owner of the land to yield up possession to others; and, *secondly*, it compels them to give him an adequate remuneration. The second of these acts is a maintenance of rights of property; the first of them could hardly be so designated.

Hobbes of Malmesbury, in his "Leviathan," contends that the chief object of a commonwealth is to

* Chap. ix.

keep men in security, out of the condition of war, and to maintain contracts and the laws of nature, which are summed up (as he expresses it) in the principle of "doing to others as we would be done to." It is, indeed, indisputable that the divine precept ought to be the universal *motive* of action in all our civil relations; whether, however, it would in all cases furnish a sufficient *guide* for political actions may be questioned without derogating from its divine authority. For it can hardly be denied that in the complicated relations of life cases must arise in which the effects of a particular measure of legislature may be so remote from their causes, and so difficult to be traced, that persons, equally sincere in their desire to follow out the sacred precept, may entertain opposite opinions as to the course it sanctions.

Aristotle's definition of the objects of government nearly coincides with that of Hobbes. In the third book of the "Politics" we find—

Πόλις δ' ἡ γενῶν. καὶ κωμῶν κοινωνία ζωῆς τελείας καὶ αὐτάρκους. τοῦτο δ' ἐστίν, ὥς ῥαμεν, τὸ ζῆν εὐδαιμόνως καὶ καλῶς. τῶν καλῶν ἄρα πράξεων χάριν, θετέον, εἶναι τὴν πολιτικὴν κοινωνίαν, ἀλλ' οὐ τοῦ συζῆν.

[A State is a union of families and hamlets for the purpose of well-regulated and independent life; that is, as we say, of living happily and virtuously. For the sake then of virtuous actions, we conclude, political union exists, and not for mere association.]

In his celebrated "*Contrat Social*," Rousseau assigns a test of the attainment of the objects of government as follows : premising that moral qualities have no precise measure, he proceeds " *Quelle est la fin de l'association politique ? C'est la conservation et la prospérité de ses membres. Et quel est le signe le plus sûr qu'ils se conservent et prospèrent ? C'est leur nombre et leur population. N'allez donc pas chercher ce signe si disputé. Toute chose d'ailleurs égale, le gouvernement sous lequel, sans moyens étrangers, sans naturalisation, sans colonies, les citoyens peuplent et multiplient d'avantage est infailliblement le meilleur. Celui sous lequel un peuple diminue et dépérit, est le pire.*"

[What is the end of a political association ? It is the preservation and prosperity of its members. And what is the surest sign that they are preserved and prosper ? It is their number and population. Let us then seek no further for this sign so disputed. All things else being equal, the government under which, without foreign means, without naturalisation, without colonies, the citizens increase and multiply the most, is infallibly the best ; that under which the people diminishes and decays, is the worst.]

But is the sign thus infallible ? We may easily find instances of increasing population under bad government. To proceed no further than Ireland, it may be affirmed, without deciding where the blame lies, that that country has been ill-governed. Yet its

population for a long period increased at a rate far exceeding that of the increase of the means of subsistence. In China, again, the enormous population has long been misgoverned by arbitrary and corrupt rulers. It is true that the effects of misrule have been evidenced in the one country by an exodus, in the other by rebellion. It is true that population is one sign of good government, or to speak somewhat more precisely, where the population decreases, the decrease is in most cases the effect of bad government. But the populousness of a country depends on other causes besides those to which Rousseau refers — may arise from the effects of climate, the sanitary and moral condition and physical organization of the people, and the loss of self-respect, which renders them content with inadequate and precarious subsistence, and, therefore, improvident in their marriages. It may be replied fairly enough, that when these evils have continued for so long a time as to be intolerable, their results will be pauperism or migration. The *permanent* increase of population under a permanent government is a test of the excellence of government; but time is an important element of such a test. If we adopt it, we must refer, among other things, to the gradual operation of institutions, under which the nation exists—that is, we must look for other evidences of good government, besides those which a mere census affords.

Thus have been stated some of the most celebrated theories, which eminent political writers have proposed, for testing the important question before us. I might have easily multiplied citations of the opinions of profound and learned thinkers on this topic, but feared to appear to linger on the threshold of my subject. Moreover, the quotations suffice to show the principal types of doctrines advanced upon this head. In proposing opinions of my own respecting it, I must be understood to do so with hesitation, and somewhat doubtful whether the whole range of objects of government can be comprised within a single definition. The difficulty here presented is that which attends all questions of classification—that of reducing a large number of diverse objects under one description which shall include them all, and exclude all others.

If we consider for a moment the enormous extent of the operations of our own Government, we shall not fail to perceive the number and diversity of the functions to be thus classified. The British Government not only controls all the complicated social relations of the inhabitants of these islands, but also their international relations with the rest of the world, and their colonial relations with British dependencies. What a vast field for inquiry does the latter class of relations alone suggest! Over how many broad domains of the earth are the British

Colonies distributed ! They comprehend large parts of both hemispheres, vast continents which glow with the fervour of a tropical sun—and ice-wasted regions of the Arctic zone ; countries densely teeming with human life—and the sparse populations of prairies and primeval forests ; nations gifted with arts of civilization—and aboriginal races who roam their hunting-grounds in savage freedom ; ancient nations rich in the accumulated wealth of ages, and among whom civilization seems to have grown effete—and new nations who gather the wealth of a virgin soil, and by whose energy civilization advances with rapidity heretofore unexampled. East and west, from China to the shores of the Pacific ; north and south, from Canada to Australia, are large and important colonies of the British Empire. The international relations, again, of the British Government, are far more extensive than of any other—partly from the extent of its dominions, which are affected by the contiguity of every foreign nation,—partly by the wealth and power which render British treaties and alliances of the greatest importance to the rest of the world. Lastly, the domestic relations of our Government are the most complicated of any, partly because of difficulty of subsistence in a densely-populated country,—partly from the national independence and the diverse interests of the country which have shares in its government.

In attempting to define the duties of government none of these considerations can be omitted. How far is Great Britain bound to provide for her own people, and protect the poor against destitution? How far is she bound to provide, not merely for their material subsistence, but for their intellectual progress and their enjoyments? How far is she bound to regard the welfare of her colonies, and exercise control over them? How far is she bound to regard herself as one of a family of nations—to protect the oppressed, to unloose the chains of the captive, to extend her territory, to promote civilization in foreign lands? These, and many other important and difficult questions, suggest themselves in a general inquiry respecting the duties of government.

Great and manifold, however, as are the difficulties of the inquiry, we may considerably reduce them by a process of elimination. We may at once set down several social objects which the duties of government do not comprehend. It certainly is not the duty of government to protect the minority only, that is, the rich; and it as certainly is not that duty to protect only the majority, that is, the poor; for a precept, true of all times and nations declares, "Thou shalt not respect the person of the poor, nor honour the person of the mighty; but in righteousness shalt thou judge thy neighbour." Again, it is not within the province of government to enforce those moral

laws which are merely personal, and do not affect society; for man is individually responsible to God only, and not to his fellows, for those private thoughts and actions in which his neighbours are not concerned; therefore society, or government, representing his neighbours, cannot assume on their behalf a power to which they individually have no right; moreover, no system of laws could secure evidence of mere motives or purely private infractions of moral law, without a surveillance intolerable in a civilized community. Public laws, therefore, ought to affect men in their social relations only.

It appears to me that the duties of government are comprehended in two principles, which, for the sake of distinction, may be designated the *Principle of Morals*, and the *Principle of Wealth*. If we admit that the same Omniscience regulates the moral and the physical world, and that the general object of government is the happiness of mankind, we must inevitably conclude that obedience to the moral laws is the end of our temporal existence; and that it is, therefore, the supreme duty of government to promote the observance of the social acts prescribed by those laws. If, then, the dictates of the moral laws affecting society could be primarily discovered in every measure of government, we should have in every case a sufficient and infallible guide of action. But this, I have said, is not always to be obtained

without a reference to secondary principles ; the laws of national morality are not always capable of being ascertained *à priori*. But if we assume the necessary tendency of national morality to be to promote national happiness—and conversely—the experienced results of any course of political conduct affords a test of its conformity to morality ; supposing, always, disturbing or accidental causes to be abstracted.

The secondary test of the right objects of government, here proposed as subsidiary to, and consistent with, the principle of morality, is the *Principle of Wealth*. This second principle may be enunciated as follows : *The duties of government are comprised in those acts which conduce to the permanent increase of the national wealth.*

It is assumed that, to adopt a general phrase, government ought to be actuated by a desire for the welfare of its subjects, and the purpose here is simply to give some *measure* of that welfare. I believe that, under circumstances of gradual operation, the progress of the welfare of a nation may be very fairly measured by the progress of its *wealthiness*, or the average value of commodities used by each of the people, *i. e.*, the ratio of the total wealth consumed annually to the number of the population.*

* This ratio cannot, however, be ascertained with complete exactness from statistics. The material wealth produced by a country annually is not wholly expended on the immediate subsistence or

It may be objected that this measure relates only to the material welfare of mankind, whereas the happiness of men depends on the supply, not merely of physical wants, but of moral and intellectual wants also. But I shall endeavour to show, that regarding the effects of modern civilization, it is a near approximation to truth to assume that the supply of all these wants proceeds *pari passu*.

The wealth which supplies physical wants, most frequently provides the means of intellectual culture, and secures against the strongest temptations to moral delinquency. If the mere increase of national wealth could proceed, unaccompanied by an increase of knowledge and intelligence on the part of the people, and their moral improvement, some of the elements of civilization would be wanting; and experience shows that states of society may exist in which, by sudden influx of wealth, a people may advance in prosperity without any corresponding moral and intellectual improvement. It is possible, conversely,

enjoyment of its inhabitants. Part of that wealth is accumulated or capitalized in buildings, railways, works of intellect and art, &c., of which the enjoyment is partly immediate and partly prospective. It seems impossible to apportion the two parts exactly. But if the estimate be extended over a sufficient length of time to eliminate accidental causes, the relative amount of physical comfort of a population in different years will be nearly as the average value of products wholly consumed. Thus, if it were found that the average quantity of food, clothing, and fuel, used by each member of a community annually, steadily increased for several years, there would be strong evidence that it advanced in prosperity.

that a state of society may exist in which a people, possessed of great moral and intellectual culture, may be reduced to poverty by sudden disaster. But both such conditions of society are necessarily transitory. It seems certainly contrary to experience that a permanently indigent nation should long remain moral and intellectual—or a permanently wealthy nation, uninfluenced by a desire for mental and moral advancement. The very causes which secure the stability of national wealth,—energy, foresight, and honesty, are those which contribute to individual improvement. It is admitted that there are instances of nations wealthy, and yet degraded in morals; as, for example, Spain after the discovery of the mines of Peru; societies wealthy and yet little advanced in intellectual attainments, as California and Australia at the present time. But, in these cases, the influx of wealth has arisen from accidental causes, and not from those permanent sources of prosperity which, it is here contended, promote civilization. The cases in which permanent wealth has been associated with national degradation are more apparent than real: the nations of the East, characterised by social depravity and ignorance, present frequent instances of regal magnificence; but I apprehend that those nations were not in a proper sense wealthy. The pomp and splendour of their courts arose from oppression and exaction, and

were strongly contrasted with the poverty of the people at large. On the contrary, European and American civilization have uniformly been active causes of increasing the material prosperity of States, and, by giving facilities for the acquisition of wealth and power by men of talent and enterprise, have extended the means of individual improvement among all the members of their communities.

It is not here contended that the nation which is permanently the wealthiest is necessarily the wisest and the best. Of course, in comparing nations among each other, mere wealth is not a sufficient criterion for estimating national character. Taste, race, religion, climate, and other causes contribute to its formation. A people may be wealthy and yet sordid; poor and yet simple, abstinent, brave, and virtuous. The principle contended for proceeds to this extent only—that the causes which contribute to the progress of civilization among any one people (the influences of climate, race, and other independent causes remaining the same) promote the national wealth also.

It is not true that as nations advance in wealth they are found by experience to become luxurious and corrupt in morals. The instances which are cited in support of such a proposition are uniformly instances of the wealthiness, not of a whole nation, but of a few of its princes or richest men.

Poverty and ignorance may coexist by the side of wealth and intelligence, as they now do in England ; but the uniform tendency of political experience is to show that, as the excessive irregularities in the distribution of wealth are diminished, the collective wealth of the nation is increased. This consideration removes another objection which may be alleged against the Principle of Wealth proposed as a rule of government, namely, that the principle relates only to the aggregate wealth of the community, and not to its proper distribution. Political economy demonstrates nothing more distinctly than the impolicy of legislative restriction of the free exchange of every kind of wealth. The inordinate accumulation of property in the hands of a few may be traced to be a necessary consequence of agrarian, protectionist, or socialist doctrines, which are all based on the same erroneous principle—restriction of exchange. It may be safely asserted to be the duty of the State to abstain from coercing the operations of trade and exchange, and to restrain individuals from exercising the like coercion, either by entails, monopolies, or combinations to maintain artificial prices of any species of property, whether it be land, merchandize, or labour. And this principle has been partially and imperfectly recognised in our laws by the repeal of protective duties, by provisions to facilitate the barring entails, by restraint of mortmain grants,

which tend to render property inalienable, by laws against perpetuities, and by statutory restrictions of those dispositions of property which require its accumulation until a remote period.

The wealthiness of a nation has been above defined to be the ratio of the total annual wealth consumed to the number of the population. This ratio might indeed be increased two ways, by diminishing the denominator, the number of the population ; or by increasing the numerator, the amount of wealth : but the first of these methods is directly contrary to the moral law, and all those causes which contribute to the happiness of a nation actually encourage increase of population. The miseries of pauperism arise, not from gradual increase of population, but from *fluctuations* in the national wealth. The population of a country generally progresses according to the measure of its *greatest* abundance.* If, therefore, to a period of prosperity a sudden reverse succeed, the number of people will be in excess of the means of subsistence, and the miseries of pauperism necessarily follow. But it seems safe to assume that where the causes producing those fluctuations (among which war is especially to be noted) are avoided, the population and the average productive powers of the country will progress together with a conformity sufficient to insure means of subsistence to the community.

* "Jeffrey's Contributions to the Edinburgh Review," Vol. I. p. 103.

The inquiries respecting the principles of population have established no truth more important than that just noticed—that the population of a country progresses according to the measure of its *greatest* abundance. Every accession of wealth is observed to be productive of an increase of population; but a diminution of wealth cannot, of course, be compensated for at once by a diminution of population. The result is pauperism. Consequently, the population test, recommended by Rousseau, is by no means so accurate a test of the prosperity of a country as its wealth. Accordingly, however, as the wealth of the country is better protected from sudden fluctuations, and the people more completely subjected by education to moral and prudential restraints, the test of prosperity by population, and the test by wealth, become more nearly coincident.

Of the two ways, then, of increasing the average wealthiness of a country—the diminution of the numbers of the population, and the increase of the total wealth—the latter is the only proper object of government. Now, the means which a government has at its command for increasing the wealth of a nation are almost all indirect. These means consist chiefly in the protection of persons and property, the maintenance of the social laws of morality, and the promotion of moral and secular education. It is in this regard that the public institution of churches, schools,

and museums is comprehended in the principle of wealth as a test of the right objects of government. Poor laws, again, may be reckoned among indirect means of promoting national wealth, if for no other reason than that provision for the indigent by poor laws is less costly to the country than their maintenance by mendicancy or theft.

The Principle of Wealth appears to comprehend also the duties of government in its international and colonial relations. Its primary object is the welfare of its own subjects ; but that welfare frequently consists with, and is promoted by, acts of international justice. It will be admitted that a government ought to have no international relations to the injury of its own subjects ; and it would obviously be impolitic and impracticable that a Government should constitute itself a universal arbiter of justice throughout the world. There is, therefore, a limit to the performance of even just acts affecting foreign nations. But, on the other hand, it cannot be denied, that there are cases in which it is the clear *moral duty* of one nation to interfere for the protection of another. This duty affecting *nations* is strictly analogous to that affecting *private persons*, on which civil government depends. If I see my neighbour attacked by a robber or assassin, can it be said that I am not interested in assisting him to repel the attack ? I am very much interested therein ; that on the like occasion

I may claim similar assistance from my neighbour. It is on this duty and benefit of mutual protection that civil government is founded. But it is clear that the duty and benefit are not restricted by artificial, geographical, and ethnographical limits. As international intercourse becomes greater, the duty obtains a wider operation ; and no nation can morally claim an exemption from that duty without, at the same time, giving up all claim on the family of nations for assistance in its own hour of need.

It is nothing to the purpose to say that the duty is ill-defined. It would be well-defined if treaties were made — not secretly by kings—but openly by the people affected by them. Moreover, irrespectively of positive international law founded on treaties, there are natural obligations of nations towards each other, depending on the universal moral law. The very definition of universal morality implies *mutuality*: “Thou shalt love thy neighbour as thyself.” There is, therefore, no securer way of defining limits of international duties than by reference to the welfare of the people in whose name they are performed ; and the object here has been simply to show that of that welfare the wealthiness of the nation is a correct measure.

As the object of this work comprehends so much only of the principles of legislation as is necessary for examining the machinery of government, for inform-

ation respecting the principal economical errors of legislation—such as State trades and manufactures, monopolies, ill-devised taxation, “paternal” interference with the national industry, and *ex post facto* legislation—recourse must be had to the valuable works in which the economical principles of legislation are formally discussed.* The object of the present Chapter has been confined to the explanation of the primary duties of government. By aid of the conclusions which the collective wisdom of ages has established respecting this subject, we are directed, as it appears to me, to two mutually-connected principles, comprehending the whole duty of government—the Principle of Morals and the Principle of Wealth. The one regards the causes, the other the effects of the welfare of a nation. Its wealth is no more than a numerical measure of the results of good government; but the eternal and supreme cause of its happiness is that highest morality, on which, as we are infallibly taught, hangs all the Law.

* Among those sources of information ought to be especially noticed an admirable discussion of the “Limits of the Functions of Government,” in the fifth book of Mill’s “Principles of Political Economy.”

CHAPTER II.

THE RIGHTS OF GOVERNMENT.

IF government have its duties, it has its rights also. Rights and duties necessarily co-exist.

Therefore, when the government ceases to discharge its duties, it necessarily gives up its rights, and if it continue to exist, retains its power by coercion. For instance: when James II. abdicated the throne of this country, he lost, as it will be now almost universally admitted, all claim to the obedience of the nation.

The right of government is usually supposed to be derived from one of two sources—divine authority, or a social contract. It does not appear to me that either supposition excludes the other. All the natural powers of man are the gift of God, and men are imbued with that gregarious instinct which renders them, as Aristotle has expressed it, political animals. When, therefore, they are associated in communities, the rulers of them owe their power to an instinct naturally, and, therefore, divinely implanted.

The rulers of a nation, then, in accepting the powers of government, accept them subject to those moral laws to which all other human power is subject, and forfeit their right to their powers in the same way that the right to all other human power is forfeited ; namely, by violation of the moral laws.

But part of the moral law is the observance of valid contracts. If, then, a ruler, on accepting the office of governing, enter into an expressed or implied contract with his subjects as to the mode of governing, the moral right to authority over them depends partly at least on the observance of the contract. Of course, circumstances may supervene which discharge or excuse part of the conditions ; but if they continue to be the essence of the contract, there may be such a total violation of them by one party as to free the other from all corresponding moral obligation.

Hume, in his essay "On the Original Contract," says, in reference to it, that "if the agreement by which savage men first associated and conjoined their force be meant, this is acknowledged to be real ; but being so ancient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would assert anything to the purpose we must assert that every particular government which is lawful, and which imposes any duty of allegiance on the subject, was first founded on consent and a voluntary compact."

But admitting that the assertion cannot be always sustained that every lawful government originated by compact, does it follow that government is not subject to compact? It is very true that many governments not "*first* founded on consent and a voluntary compact," nevertheless have subsequently a right to allegiance. But there is no inconsistency between this admission and the doctrine of a social contract, if in such cases the "consent and voluntary compact" have been merely posterior in date to the origin of the government. Therefore Hume's latter objection seems to be completely avoided, by considering that the *right* of such governments commenced only when the "consent" was given, and the "voluntary compact" entered into. And were it otherwise, we should be driven to the monstrous doctrine that mere possession confers right—that whoever by force or fraud overthrows an existing government, and substitutes his own, thereby immediately acquires a moral right to govern—a doctrine which tends to the wildest anarchy.

The principles of despots and demagogues continually lead to like consequences.

To the objection that the Contract by change or succession of rulers loses its authority, the sufficient answer is, that the compact of government is perpetually renewed, and is not the less valid because it is not perpetually established by documentary evi-

dence. Otherwise we should have to resort to another untenable position—that successive rulers are not in any manner bound by the constitutional forms observed by their predecessors.

It is of no moment to establish an *original* contract in the sense intended by Hume, but it is all in all for the stability of constitutional government to maintain a perpetual *social* contract. For—if rulers be not bound by that to observe the forms of the constitution—by what are they bound thereto? By their duty to God? But the details of constitutional forms are so much matters of human arrangement that they must be defined by human ordinances.

Hobbes, in the "*Leviathan*," gives an arbitrary definition of a Commonwealth, which, he says, is instituted when every member of it covenants to authorize "all the actions and judgments" of the rulers "as if they were his own."* Such a commonwealth was never yet instituted. Indeed, he subsequently observes that a subject has liberty in all those things (self defence, for instance), "the right whereof cannot by covenant be transferred."† Hobbes and Hume argue against the social contract on directly contrary assumptions. Hobbes, on the assumption that the contract originally constituting a government is irrevocable and unalterable. Hume, on the assumption that the contract is destroyed by alteration.

* "*Leviathan*," Part II, Chap. xviii.

† *Ib.* Chap. xxi.

Instances are continually recorded in history of original compacts between rulers and subjects. When David was made king over Israel, "All the elders of Israel came to the king to Hebron; and king David *made a league with them* in Hebron before the Lord: and they anointed David king over Israel."* And when Jehoshaphat was made king, "Jehoida made a covenant between the Lord and the king and the people, that they should be the Lord's people; *between the king also and the people.*"† When Saul was made king, Samuel "told the people the *manner of the kingdom*, and wrote it in a book, and laid it up before the Lord."‡

The French Charte and American Constitution are modern instances of written social contracts.

The existence of a like contract in England was affirmed on a very solemn occasion when, in 1688, the two Houses of Parliament declared that James II. had "endeavoured to subvert the constitution of this kingdom, by breaking the original contract between king and people."

Milton, in his "Tenure of Kings," has cited many instances of the recognition of the social compact.

Lastly, the sovereigns of this nation, at their coronation, solemnly promise and swear "to govern the people of the United Kingdom of Great Britain and

* 2 Sam. v. 3.

† 2 Kings xi. 17.

‡ 1 Sam. x. 25.

Ireland, and the dominions thereunto belonging, according to the statutes in Parliament agreed on, and the respective laws and customs of the same."

The doctrine which denies the existence of a social contract has been founded on the assumption that the members of a community, in choosing their rulers, give up *all* power to them. This is not only contrary to fact but contrary to reason. Self-defence is, by the laws of nature, a right inalienable, paramount to all human law; and any compact to give up that right would, even if it were made, be void *ab initio*.*

As the laws of nature are paramount to all human laws, so also are the laws of God. These, too, constitute a limit to the duty of obedience to national government. It is a vain theory of government which requires an allegiance unlimited, and therefore including a surrender of the rights of conscience.

The hypotheses that the members of a community contract to intrust *all* their rights to their rulers, and that if one generation were mad enough to make such a contract, their descendants would be bound by it need no refutation. Strip the propositions of the garb of sophistry, in which despotism loves to veil them, and their naked deformity is their sufficient condemnation.

* This consideration seems a perfectly sufficient answer to the question which, in the "Crito," Plato represents Socrates as raising, —viz., whether he were morally bound not to escape from execution, though he knew the sentence of the Five Hundred to be unjust.

In no legitimate sense can the government of a free community be considered *paternal*. Among an uncivilized people, incapable of understanding or providing for their own welfare, the government may act with the authority of a parent or master ; but the essential characteristic of a free state is its self-government. To such a State, therefore, the national government stands in the relation not of a parent, but of a trustee, to whom the nation delegates powers, which it cannot of itself conveniently exercise. A paternal government is the very worst which can possibly exist, not merely because its excessive interference with its subjects represses their energy ; not merely because it acts according to temporary motives instead of settled rules, but chiefly because it denies the self-dependence of the people, and is interested in perpetuating a false relation between itself and them.

It seems perfectly impossible to distinguish between a Social Compact and a Constitution. A Social Contract is an agreement between the governed and governors, that the government shall be carried on according to a particular method ; and a Constitution defines that method. Those who recognise a constitution and not a social compact, are continually inconsistent in their discussions of political principles. Thus it has been strangely argued that the supreme power—that of Parliament—in England cannot act

unconstitutionally ; and that, too, by those who define a constitution to be "an act of the sovereign power by which it delegates *part* of its authority." * By the definition the authority delegated is partial, and may therefore be exceeded by unconstitutional trespass. The result of the argument is, therefore, this dilemma—either Parliament may act unconstitutionally, or it is not a part of the constitutional government.

Again, there are those who, admitting the doctrine of a social compact to be abstractedly true, urge that it is a dangerous doctrine, and ought therefore to be concealed. I am more concerned to ascertain what is true than what is deemed safe, considering the security which depends on the suppression of truth to be unsubstantial and delusive. If the promulgation of the principle of a social compact be dangerous to a government, the danger is the fault of the government, not of the principle. A government, which has a right sense of its duties, has no reason to fear because its subjects deem it responsible. It is only the unfaithful steward who denies his stewardship.

Locke has well shown that the doctrine that the right of government is a TRUST, and may be forfeited, so far from conducing to rebellion, is in reality the best defence against it.† Happily in our own

* "Standard Library of Political Knowledge," Art. 'Constitution.'

† "Two Treatises on Government," Book II. Chap. xix.

country, where the principle is indisputably established, the discussion is almost devoid of practical importance. If the question, however, be argued on its merits, we cannot fail to see that the only effectual restraint of tyranny is the certainty that there is a limit to the endurance of wrong, which being overpassed, the voice of nature speaks out in tones which put to silence, though they cannot to shame, the apologists of oppression.

CHAPTER III.

DIVISIONS OF THE OFFICES OF GOVERNMENT.

IN order to have a simple and accurate account of the British Government, we must adopt some system of classification of its component parts. The classification which appears most natural, and is most consonant with practice, is founded on geographical distinctions. All government is either

- I. DOMESTIC, and relates to the mother-country only ;
- II. COLONIAL, and relates to its dependencies ;
- III. INTERNATIONAL, and relates to people not subject to it.

The following definitions are required in establishing further divisions of the offices of government :—

GOVERNMENT is action performed by a power, acting as representative of an independent community.

The LAWS of a nation are public, prescribed rules of its government. Laws have been variously defined,

but their essential characteristics appear to be that they are, *firstly*, mandatory, directing or defining something to be done or not done in specified cases; *secondly*, are invested with public authority, therefore are enforceable by the power of government; *thirdly*, are *pre-scribed*, and direct the conduct of government prospectively. Even those laws which are said to be *ex post facto* have a prospective operation.

In England, Government is carried on according to *laws*. There are occasional instances in which the Government has to deal with emergencies for which the law has made no provision, but those instances are extremely rare, and even in them the law impliedly sanctions the interposition of Government.

In each of its three departments above mentioned a legal Government has two distinct functions, and may be subdivided into—

1. The *Legislative* power, which authorises laws;
2. The *Executive* power, which publicly provides for the execution of laws.

As the laws comprise all the acts of British Government, these powers are all the powers of that Government. They are occasionally intermingled, though essentially distinct. It is evident that the more completely they are separated, the more completely is the Government legal and constitutional; for, if the same power made and executed laws, it could dis-

pense with laws by edicts for every particular occasion, and would be, in the strictest sense, *arbitrary*, or actuated entirely by temporary motives.

As the government of a nation represents it, the supreme authority must belong to the government; and as all power of British Government is derived from the laws, it follows that the legislature is the supreme power; and being supreme, it must be one and undivided. All the laws are not, however, directly enacted by the legislature, but some of them are made by other powers with the sanction of the legislature.

The executive power has numerous divisions, according to the nature of its functions. The broadest classification of them appears to be that which distinguishes acts of the Executive as either *judicial* or *administrative*. Whenever the application of laws to private cases is susceptible of dispute, such dispute may or must always be settled by the *judicial power*. The *administrative* power is that which performs all those acts of state prescribed by the laws which are not judicially questioned. The judicial power is of necessity armed with authority to interpret the laws. The constitution of England gives also to this power a limited authority to change the laws, subject to the control of the legislature. It is obviously of almost as much importance for the preservation of the constitution that the administrative should be separate

from the judicial power, as that both should be separate from the legislative power.

The divisions of the offices of Government are expressed by the following scheme:—

GOVERNMENT.	{	I. DOMESTIC.	{ 1. <i>Legislative.</i>	{	Admini
			{ 2. <i>Executive.</i>		Judicial
	{	II. COLONIAL.	{ 1. <i>Legislative.</i>	{	Admini
			{ 2. <i>Executive.</i>		Judicial
	{	III. INTERNATIONAL.	{ 1. <i>Legislative.</i>	{	Admini
			{ 2. <i>Executive.</i>		Judicial

CHAPTER IV.

THE BRITISH LEGISLATURE.

THE supreme legislative powers of the British Empire is by its constitution given to Parliaments.

Parliaments are not permanent, but are constituted successively for limited periods of duration. Of each Parliament there are anciently five parts: 1, The sovereign; 2, The lords spiritual; 3, The lords temporal; 4, The knights of the shire; 5, The citizens and burgesses. Of these, the lords spiritual and temporal constitute one deliberative assembly—the House of Lords; and the knights of the shire, citizens, and burgesses, another—the House of Commons, of which the members are chosen periodically by popular election.

The several bodies which compose a Parliament have, besides their legislative, executive functions also, which will be considered under the head of Executive Government.

Parliaments exercise supreme but not sole legislative powers. By the Constitution and Acts of Parlia-

ment, extensive legislative functions are given to the Queen in council, to the judicature, to colonial legislatures, to corporations, and other constituted authorities.

The supremacy of Parliaments, in their legislative capacity, is a fundamental principle of the British Constitution. So long as each Parliament is constituted, the Constitution recognises no appeal from its decisions; but there is a well-recognised method by which, *after the termination* of the existence of a Parliament, an appeal to the nation at large is made on many momentous questions, and is practically decided by the result of the election of the succeeding House of Commons. The nature of these appeals, which have the virtual effect of *plebiscita*, will be considered more particularly in the part of this work relating to the House of Commons.

The supreme legislative powers of Parliament extend to every part of the British Islands, to foreign countries so far as international relations permit, and to the colonies. Parliaments, however, now only partially exercise the power of legislating for the taxation or internal management of the dependencies of the British Empire.

The Lords and Commons originally constituted but one assembly, and it does not appear to be ascertained when they became finally separate. "The inquiry, however, is of little moment, for whether the

Commons sat with the Lords in a distinct part of the same chamber, or in separate Houses as at present, it can scarcely be contended that at any time after the admission of the citizens and burgesses, the Commons intermixed with the Lords in their votes as one assembly. Their chief business was the voting of subsidies; and the Bishops granted one subsidy, the Lords temporal another, and the Commons again a separate subsidy for themselves. The Commons could not have had a voice in the grants of the other estates; and although the authority of their name was constantly used in the sanction of Acts of Parliament, they ordinarily appeared as petitioners. In that character it is not conceivable that they could have voted with the Lords; and it is well known that down to the reign of Henry VI. no laws were actually written until after the Parliament.

“ Whenever the separation may have been effected, it produced but little practical change in the uninterrupted custom of Parliament. The causes of summons are still declared by the Crown to the Lords and Commons assembled in one House, the two Houses deliberate in separate chambers but under one roof; they communicate with each other by messages and conference, they agree in resolutions and in making laws, and their joint determination is submitted for the sanction of the Crown. They are separated, indeed, but in legislature they are practically one assembly,

as much as if they sat in one chamber, and in the presence of each other communicated their separate votes.”*

Ordinarily the Houses of Lords and Commons are convoked by the act of the sovereign. There have been two instances, however, in which they met in a manner not provided for by law, namely, previously to the Restoration of Charles II. and at the Revolution in 1688.

It is provided also that Parliament may meet without summons, in case there should be no Parliament in being at the time of the demise of the Crown. On such an occasion it is provided by the statute 6 Anne, c. 7, that the last preceding Parliament should immediately convene and sit at Westminster as if the said Parliament had never been dissolved. By 37 George III., c. 127, a Parliament so revived would continue in existence for six months only, if not sooner dissolved.

In all other cases the sovereign appoints the time and place of meeting of Parliament.

At the commencement of each session of Parliament a speech is delivered to Parliament by the sovereign in person, or by commissioners appointed by the Crown, declaring the causes of the Parliament being summoned. But, after the speech has been read, the Houses do not immediately proceed to the

* “Law of Parliaments,” by T. Erskine May, p. 19.

consideration of it. It is an invariable rule of both the Lords and the Commons to read a bill *pro formâ*, before taking the speech into consideration. And this is done in order to assert their right to act without reference to the causes of their summons.

Parliament is prorogued by the command of the sovereign, either signified in the royal presence, in the House of Lords, by the Lord Chancellor or Speaker of the House of Lords to both Houses, or by writ under the Great Seal, or by Commission.

Prorogation terminates the session of a Parliament, which continues in existence, but cannot sit again until it receive a fresh summons. Both Houses are summoned and prorogued simultaneously, and all proceedings pending at a prorogation are by it brought to an end except impeachments. *Adjournments*, by which the deliberations of either House are temporarily suspended, are solely in the power of each independently. The pleasure of the Crown that both Houses should adjourn has sometimes been signified by message or proclamation, but it is in the discretion of each House to comply with the request.

Dissolution of Parliament is effected either by the Crown or by the operation of the statute of 1 George I., st. 2, c. 38, known as the Septennial Act, which limits the duration of every Parliament to seven years. By the Triennial Act, 6 William and Mary, c. 2, the extent of time during which Parliament was allowed to

sit was three years. Before that statute there was no limit to the duration of Parliaments but the will of the Crown. The Septennial Act, enacted by a House chosen for three years, provided for its own continuance for seven. Such a breach of trust would not now probably be ventured upon by a Parliament.

By the admirable balance of the constitution the several branches of the legislature are kept in mutual check, so that neither may gain supreme power, which is the ambition of all ruling bodies, and the greatest source of danger to a commonwealth. "If nothing had a right to prorogue or dissolve a Parliament," observes Sir William Blackstone,* "but itself, it might happen to become perpetual; and this would be extremely dangerous, if at any time it should attempt to encroach on the executive power, as was unfortunately experienced by the unfortunate King Charles the First, who, having unadvisedly passed an Act to continue Parliament, then in being, till such time as it should please to dissolve itself, at last fell a sacrifice to that inordinate power which he himself had consented to give them. It is, therefore, extremely necessary that the Crown should be empowered to regulate the duration of these assemblies, under the limitations which the English Constitution has prescribed; so that on the one hand they may frequently and regularly come together for the dispatch of busi-

* 1 Commentaries, Book I. Chap. ii.

ness and redress of grievances; and may not on the other, even with the consent of the Crown, be continued to an inconvenient or unconstitutional length."

I shall endeavour to show hereafter the nature of that danger to the national liberty which, as Blackstone here remarks, would arise from encroachment of the Houses of Parliament on the executive power. I shall here only observe, that it appears to be a very limited view of the science of government, which supposes that popular liberty is best secured by assigning uncontrolled power to an assembly popularly elected. Doubtless an adequate power of such an assembly is the mainstay of national liberty, but little observation of history and human nature is required to ascertain that such an assembly can act as tyrannously as kings, unless subject to constitutional checks.

The constitution provides for the due limitation of the duration of the powers of Parliament, by the royal prerogatives of summons and prorogation. It would be nearly impossible for a Parliament to perpetuate its powers in breach of its constitutional trust, for these royal prerogatives would naturally be kept from falling into desuetude by jealousy of the Crown of the prolongation of a power which might gradually subvert its own.

Again, the regular summons of Parliament is effectually provided for by the right of taxation being secured to the Parliament. Nearly all the revenues

of the Crown, and the supplies for carrying on the Government, being provided by Parliament only, the sovereign must necessarily convoke it at regular intervals. The right of taxation is possessed in England by Parliament singly; not, as in France anciently, by several assemblies: and the constitutional efficiency of the right obviously depends, in a great degree, on its possession by a single body. The existence of the Commons may, indeed, be considered dependent on their sole right to originate and alter all taxes and money bills; and I shall point out hereafter how jealously that privilege is guarded.

CHAPTER V.

THE LEGISLATIVE POWER OF THE CROWN.

THE separate concurrence of each of the three independent branches of the legislature is necessary to every legislative enactment. There is this difference, however, among them, that, while the Lords and Commons may indifferently initiate all bills, except money bills and bills for restitution of honours and in blood (of which the former are originated in the Commons, and the latter in the Lords), the royal prerogative is almost entirely confined to approval or disapproval of measures after they have been passed by both Houses, and, with the single exception of a bill for a general pardon, no legislative measure is originated by the Crown.

The royal prerogative of pronouncing a veto on the decisions of the Houses of Parliament was last exercised by Queen Anne in 1707, and is fallen into disuse. The present legislative influence of the Crown is exercised by means of "ministers," whom the sove-

reign has power to select and dismiss at pleasure. As the principal business of proposing new laws to Parliament is usually assigned to these ministers, the Crown has indirectly a controlling power in legislation. This power, while it contributes to the authority of the sovereign, as a salutary check on the encroachment of either of the other branches of the legislature, cannot be made an instrument of tyranny; for the ministers cannot retain their offices contrary to the will of a majority in the House of Commons, as will be more particularly explained when the constitution of the "Cabinet" is considered.

That the several enactments of Parliament should receive the royal sanction will appear very clearly if we consider the nature of that oath which, as already mentioned, the sovereign takes at coronation. Having thereby sworn to govern according to the statutes of Parliament, the sovereign, by assenting to each statute, is conclusively bound to its observance. Indeed, the same political reason which requires the coronation oath, requires the royal assent to Acts of Parliament.*

* The limited power of the chief magistrate of controlling the legislature has been found practically expedient in the most liberal constitutions. In that of America the President can veto the enactments of the two Houses, and the veto is valid unless subsequently countervailed by two-thirds of each House.

CHAPTER VI.

THE LEGISLATIVE POWER OF THE HOUSE
OF LORDS.

THE House of Lords consists of the Lords Spiritual and Temporal, who constitute one assembly. The Lords Spiritual are the Archbishops of Canterbury and York, twenty-four English Bishops,* and four Irish representative Bishops, who sit by rotation of sessions, according to an established cycle, and an Archbishop of the Church of Ireland is always one of them.

The Lords Temporal are those who sit in right of inheritance of a peerage, or have been created peers; twenty-eight of the peers of Ireland, elected for life, and sixteen of Scotland, elected for each Parliament, represent the rest.

The joint will of the Lords Spiritual and Temporal is collected by the gross majority of voices, and their assent so ascertained, to every measure proposed in

* There are now two English archbishopricks and twenty-six English bishopricks. That of Sodor and Man does not confer a right to sit in Parliament. Of the remainder, the last elected bishop is not in Parliament, unless his see be that of Canterbury, York, London, Durham, or Winchester.

Parliament, is necessary before it can become a legislative enactment. Peers of Parliament must be of full age, and not incapacitated by mental imbecility.

The greater part of the House of Lords consists of the hereditary lords temporal of England, who are dukes, marquesses, earls, viscounts, or barons. They rank in the order here mentioned, but all peers vote equally.

The creation of a peerage of either class depends solely on the will of the Crown, and is made by writ or patent, which limits the manner in which the dignity shall descend. Generally the descent is to the next male heir of the blood of the person ennobled, or, in the case of baronies in fee, to descendants of heiresses, according to prescribed rules of descent. The eldest son of a peer enjoying a barony, and a superior title, is sometimes called to the House of Peers in his father's barony; this is not the creation of a new dignity, but merely in anticipation of the son's possession.

As, by the failure of issue, titles are continually becoming extinct, it is necessary, to perpetuate the House of Peers, that it should occasionally receive new accessions. The persons on whom the dignity of English peerage is usually conferred by the Crown are peers of Ireland and Scotland, persons of noble families, or large landed proprietors, distinguished politicians, lawyers, and naval and military commanders.

It is said that there is no instance of nobility being conferred for literary or scientific eminence.

Of the peers, many very generally abstain from taking part in parliamentary proceedings; but the peers of new creation are usually active and frequent in their attendance. The sons of peers are often initiated in political affairs by being members of the House of Commons. They thus become practically acquainted with the details and routine of Government, and learn, by communication with their constituencies, the legislative wants of the community at large, and thus receive valuable preparation to discharge their duties in the House of Lords.

On examination of the constitution of the House of Lords, it will be found that most of them derive their titles from the popular nature of our modern institutions. The ancient baronial families contribute but a small part of the peers of the realm, and the large majority of the titles of that body are less than 150 years old; a very considerable part of them are of much more recent date.

In estimating the real effect of the legislative power of the House of Lords, considerations of its popular character deserve great attention. Of the peers who habitually legislate, by far the greater number consists of men who have sprung from the people: who have, by vast energy, industry, and talents, forced their way through the barriers of the

House of Lords. These men, or their fathers, have been bred up among the people ; have been habituated to rules of self-reliance and self-control ; have been taught by necessity the practice of economy ; and some of them have been disciplined even by penury—have oftentimes learned in the school of adversity—the sternest but ablest of all teachers.

Doubtless the peerage may be, and has been in modern times, conferred on those who deserved not the honour, yet such cases are rare, and rarer continually. The jealousy of the lords themselves is practically an exclusion of the plebeian whose claim to title is not patent, who has not already a title which morally is immeasurably superior to all rank by descent—that of personal nobility.

With such men the peers by descent are engaged in the conflict of debate. Consequently, only the most able of them choose to enter an arena where they require the whole strength of their intellectual powers. And so it comes to pass that the debates of the peers, on great occasions, are distinguished by a vigour of thought and a precision of reasoning, which are by no means the invariable attributes of the Lower House.

It is no insignificant sign of the intrinsic value of the labours of the Upper House that the measures which originate there receive but little alteration, and are rarely rejected by the House of Commons.

Those who judge of the House of Lords by the examples of ancient absolute aristocracies, who regard it as a means by which the Crown can create an unlimited number of powerful partizans, who deem it a barrier to the progress of liberal legislation, take no adequate account of the constitutional control to which each branch of the legislature is subject. The nobles of this country are, by the effect of its institutions, brought into continual communication with the rest of the people, and their political energy is an evidence of the correctness of the judgment of those, whose respect for our institutions is something more than a mere veneration of antiquity or adulation of rank. The manly courage and zeal with which a large number of the nobility enter into political and social discussions, on terms of perfect equality with commoners, are tolerably clear evidence that other influences attend the manner in which their power is conferred than those which would render them oligarchists. The industry, the energy, and success with which they contend in youth for honours in the public arena of academical distinctions, in the republics of science and literature, and (we may even add) in those athletic sports which are among the healthiest signs of the national energy, indicate that they are no degenerate race unworthy of their country. There may be among them, as there necessarily will be in all wealthy classes, many who are

merely *fruges consumere nati*, and who occupy their time in frivolous amusements. But this is not the characteristic of that nor of any other class of Englishmen: a zeal for work is common to them, from the duke to the peasant. The majority of peers work hard in the improvement of their lands, in local affairs, or in public business, and take their full share in the excessive competition for national honours. Happily *dolce far niente* will not bear translation into English.

The ultimate safeguard of popular liberty is popular representation; but it does not, therefore, follow that those who are chosen by the people at large will be always best fitted for the business of legislation. Of new candidates for popular favour little can be known as to their capacity for legislating by their constituents. Consequently, in the freest constituencies men are frequently chosen, whose object in getting into Parliament has been to gratify mere personal vanity, or promote private interests. It seems to be an indisputable fact, that a very considerable number of the representatives, loudest and most liberal in their professions of regard for the community, have been discovered, in process of time, to be patriots by trade, or else the representatives of private vested interests.

Now, whatever may be the defects of an assembly of legislators whose power is hereditary or created by

the Crown, there are at least some defects of a popular legislature from which they are almost wholly exempt. For instance, their votes can hardly be gained by offer of pecuniary reward, for their station and wealth generally raise them above that mode of corruption—certainly do so in England. If a peer's votes be given in accordance with what he believes to be his own interests, they are at least the interests of considerable classes of the community, not those merely of the individual voter. A peer has no temptation to espouse a cause against his conscience and judgment for the sake of favour among constituents, or from fearing of losing his seat in Parliament.

It may be answered that, though the nobility cannot be influenced by direct corruption or coercion, they may be by promotions in the peerage and honours of which the Crown has the sole disposal. It probably will not be denied that political influence is regarded in the distribution of decorations, of which, so often as they are the recompense of intrigue instead of merit, the conventional value greatly exceeds the real worth. But it is to be remembered that the disposable number of these "orders" is practically so small that they can have no serious constitutional effect; that a considerable part of them are given to persons who have distinguished themselves by real services to the State; and that the remainder are now seldom regarded with veneration by any but a

continually diminishing class of persons, whose degree of intelligence effectually prevents them from having much weight in the social scale.*

That the popular decisions, gravely and deliberately expressed, must and ultimately ought to become law is not denied ; but popular decisions are not always gravely and deliberately expressed. The history of popular delusions and infatuations ought to be a sufficient warning that the judgment of a multitude of men, however great, is not excepted from the rule of human fallibility. Even in our own time popular mania has assumed countless forms—mania for commercial bubbles—mania for science, falsely so called—mania for public extravagance and for public parsimony—mania for toleration and for persecution—mania for temperance and for excess—mania for gambling and for hoarding—mania for novelty and for antiquity—mania Gallican and anti-Gallican—mania for kings and for demagogues—mania for war—mania for false prophets and teachers, for the pro-

* "To receive, indeed, the star of an order of knighthood as a recompense for services performed in the cabinet or field ; to be thus marked out by the sovereign for the respect and admiration of his people is, indeed, an honour of which an honest man may be well proud ; but when these illustrations are given to those who have no claim but that of being born noblemen, they form a distinction without a difference, and merely point out those who wear them as sworn adherents of the First Lord of the Treasury."—Lord John Russell, "Essay on the History of the British Constitution," Chap. xxxiv. 2nd edit. Lond. 1823. 8vo.

fanest babbling and the grossest impostures of lying miracles—foolish, idle, wanton, wicked mania. Let the truth be told. Passion and prejudice may sway the counsels of people as well as of princes.

Is it a small thing, then, that the decisions of the people be submitted to the review of an assembly which, if not infallible, is at least the most grave and solemn that can be convoked? Are we to fret at every delay which their caution may interpose? On the one hand, their final rejection of the deliberate resolutions of the nation is amply provided against by the constitution. On the other hand, the submission of those resolutions to the examination of a council, in some measure removed from the effect of temporary popular emotions, is a precaution necessary for public safety.

The establishment of two legislative chambers in every great constitutional government is a strong confirmation of this view. In our country, the constitution of the Upper Chamber is attended with particular advantages, because the education and experience of the most active of its members render them well qualified to correct inaccurate details in the measures proposed by the Commons, and to originate measures relating to complicated and difficult matters of law, which could scarcely receive adequate attention in a comparatively unlearned popular assembly.

This consideration suggests another advantage of a

second legislative body, which is especially important in an empire so vast as that of Great Britain. The extent of its domains, the number of its people, and the immense variety of their interests, render a single chamber absolutely incapable to transact the whole of the necessary legislative business. It is with the utmost difficulty that the labours of a session are accomplished with the aid of the House of Lords. If we admit that a representative body contains not the whole, though the greater part, of the qualities to be desired in a legislature, it may be conceded that another chamber, constituted so as to supply the defects of a representative council, may very advantageously share with it the labours of legislation.

The principal argument in favour of an upper legislative chamber is derived from the celebrated Theory of the Balance of Constitutional Powers. This important theory deserves to be carefully examined. It assumes that an upper legislative chamber is necessary for the stability of the constitution, and for the due maintenance of the executive authority of the chief magistrate. It is not requisite here to decide the question whether the chief magistracy should be hereditary or elective, for life or a limited period; because that question may be more properly considered when we come to treat of Executive Government. But, supposing merely that some Chief Magistrate is to be appointed, it seems indisputable that the most serious

danger would arise to the community if, in times of difficulty and excitement, a paramount power of enforcing the laws were not placed in his hands. The two essential qualities of good government are justice and stability. The great problem of constitutional science is to secure both, without imposing conditions which bring them into conflict. Now, the stability of government depends essentially on the existence of a paramount executive authority, which cannot be questioned or resisted by any other power, within or external to the State. If the executive authority could be defied by internal disaffection or foreign hostility, it is obvious that government, properly so called, would come to an end.

Occasions must, however, arise, in which the exercise of the supreme authority must be necessarily distasteful to large and powerful bodies within the State. For instance, that authority may be required to enforce laws which deprive wealthy and influential classes of unjust privileges, detrimental to the commonwealth; or may be needed to restrain designs of a part of the citizens to make invasions of neighbouring states, or to participate unlawfully in foreign wars. The necessary supremacy of the executive would in these cases be brought into jeopardy, by conflict with the popular will. It is evident from experience that, under every form of government, the desire of a large part of the people must be occasionally opposed to

measures taken by the executive government to maintain peace and order. But if the popular and executive powers be brought into direct antagonism, the contests between them must generally be fatal to one or the other—must end either in the destruction of the wholesome, but often unpopular, control of the executive, or of the overthrow of popular power. By the interposition of a chamber so constituted as to be superior to popular impulses, and yet not identified in interest with the executive government, such direct conflict may in general be avoided. If we appeal to history, we shall find continual instances of the upper chamber thus acting mediatorially; and many proofs that where such a mediating body is wanting, the executive government has become so powerful as to set at defiance the will of the people; or so weak as to be unable to restrain the political propagandism, aggressiveness, inconstancy, and precipitancy, which appear to be the inherent vices of all uncontrolled democracies.

In a stable constitution provision must be made, not merely for the ordinary administration of the law, but also for preventing its subversion by ambitious designs. The prize of government is so splendid, that the protection of it from violent appropriation must be jealously secured. Now, when a private trust is given to private persons, the power of the law, superior to theirs, is sufficient to restrain or remedy a

breach of the trust. But when the whole nation intrusts supreme authority to a government, where is the superior authority which shall restrain it from a breach of trust? *Quis custodes custodiet?* It is easy to appoint guardians of the public liberty, but who shall guard the guardians? Of this problem there appears to be no solution, but the appointment of *several* guardians, who shall mutually check each other. In a legislature composed of three branches, neither can seize an absolute power without overcoming the opposition of the other two. In all the attacks on the constitution of this nation, by either the Crown or the Commons, the Lords have uniformly sided with the power resisting the aggression. An absolute government such as that which Charles the First desired, and Cromwell obtained, would be impossible while the House of Lords retained its authority.

The theory of the balance of constitutional power has been combated in an article on "Government" in the "Encyclopædia Britannica," by Mr. James Mill, who declares that if any theory deserves the epithets "wild, visionary, chimerical," it is that of that balance. He asks, "If there are three powers, how is it possible to prevent two of them from combining to swallow up the third?" The argument on which his conclusion is founded is as follows: "In the supposed case of the balance of the monarchical, aristocratical, and democratical powers, it cannot be for the interest of the

monarchy or aristocracy to combine with the democracy ; because it is the interest of the democracy or community at large that neither the king nor the aristocracy should have one particle of power, or one particle of the wealth of the community at large for their own advantage. . . . The monarchy and aristocracy have all possible motives for endeavouring to obtain unlimited power over the persons and property of the community. The consequences are inevitable. They have all possible motives for combining to obtain that power, and unless the people have power enough to be a match for both, they have no protection. The balance, therefore, is a thing, the existence of which, upon the best possible evidence, is to be regarded as impossible."

Notwithstanding the positive manner in which this conclusion is affirmed, better proof of it is necessary before it is admitted. It is not by intolerant dogmatism that the consentient authority of the eminent writers, who have affirmed the principle of the balance of the British Constitution, is to be overthrown. To me it appears, that in the preceding quotation there is scarcely a single sentence which does not involve some erroneous assumption or confusion of language. In the first place, there is an error in the words, "all possible motives." Probably, they mean the single motive of self-aggrandisement. Other motives by which human beings — and, therefore, monarchy,

aristocracy, or democracy—*may* be influenced are honesty, patriotism, prudence, and love of approbation. Therefore, it is not correct to say that aristocracy and monarchy have *all possible* motives to obtain unlimited power; for the motives just mentioned have a directly contrary influence. Again, a fallacy pervades the whole reasoning from the continual assumption, that (1) "the people" are a single body; (2) are distinct from the aristocracy and monarchy; and (3) have interests necessarily conflicting with those of the aristocracy and monarchy. Now, in the first place, the "people" are for no constitutional purpose whatever one body; in England, at least, there never was yet an instance of popular unanimity in any political controversy. Secondly, the aristocracy and monarchy are part of the people of England; and, thirdly, have some interests in common with the rest of the nation, among which common interests are that of national independence, and others, which obviously ought to be taken into consideration in concluding upon the present question.

Lastly, the argument of Mr. James Mill involves a contradiction which defeats it. The argument is founded entirely on a supposed consequence of a human motive, and therefore cannot be established, unless it can be shown that, wherever the same motive exists, like consequences must follow. But the motive in question (self-aggrandisement) is ob-

vously not confined to two out of the three classes into which the community are here divided. The demagogue, the oligarchist, and the tyrant, are equally influenced by it. The cause which it is here supposed would lead the monarchy and aristocracy to combine to destroy the power of the democracy, might lead either of the former to seek a combination with the democracy to destroy the remaining power. As all three consequences cannot happen, and each of them is, according to the argument, possible, it follows that it cannot be accurate to conclude (as here) respecting either of them that "it is inevitable."

Regarding the "people" as a body necessarily adverse to the aristocracy and monarchy, Mr. Mill asserts that "unless the people have power enough to be a match for both, they have no protection." If the "people" were unanimous in any contest, and the monarchy and aristocracy unanimously opposed to them, this assertion would be true. But if we turn from hypotheses to the safer ground of historical evidence, we shall find that these kinds of unanimity are altogether imaginary. Wherever the government of a country has been subverted by a power *within* it, (and this is the only case here considered), either by sudden violence or insidious encroachments—advantage has been taken of lack of unanimity in the nation to effect that subversion.

The chief difference between Mr. Mill's view of the principles of the English Constitution and the views of the most eminent of our constitutional writers is probably this:—he regards the representative as the sole “checking” body, whereas they regard the three bodies of the legislature as checking each other.

That each of these bodies has, at different periods of our history, exercised the function of checking encroachments of the others, seems to be indisputable. But it may be argued, that as the House of Commons becomes more and more popular, a check upon it is less and less wanted. But no political body, however constituted, is exempt from the influences of ambition. The House of Commons is not the “people,” but a trustee for them. However popularly it may be constituted, it cannot be absolutely exempt from a love of absolute power, which is an almost universal passion. If the House of Commons were the sole governing power, can it be said that there would be no danger whatsoever of its attempting to perpetuate the power entrusted to it by the electors to be held for a few years only? Would there be no danger that, at the expiration of the time allotted for its existence, it would not find excuses for refusing to yield up the authority it possessed? A modern House of Commons, which attempted an unpopular exercise of parliamentary privilege, was restrained from a most dangerous inno-

vation of constitutional liberty by public opinion and the incorruptibility of the Court of Queen's Bench. That great tribunal in the case of *Stockdale v. Hansard*, proved that it could defend public liberty against attacks of the Commons as heretofore in many crises of English history against attacks of the Crown.

The exercise of judicial and legislative powers by the same body indiscriminately, tends (as I have hereafter endeavoured to show) to the subversion of liberty.* Yet the House of Commons, in the case just mentioned, endeavoured strenuously to enforce a judicial authority by imprisonment. Again, the House of Commons (as it will be contended in another chapter) is the very worst tribunal for deciding respecting controverted elections, and yet has always shown the utmost unwillingness to part with its authority respecting them. Doubtless a House of Lords is subject to like influence of ambition, but the encroachments of the popular branch of the legislature upon the executive power are attended with greater danger, because they are seldom of a kind to arouse popular opposition. The full danger of such encroachments is to be apprehended only by historical and political research, of which the majority

* This remark does not apply to the House of Lords, where the legislative and judicial bodies are distinct ; the latter in practice comprising the "law lords" only.

of the people take no heed. And yet those who have most earnestly applied themselves to constitutional investigations concur in representing such encroachments as the most dangerous to public liberty. How, then, are they to be resisted, if, as is generally the case, they are not of a kind to attract public attention, or provoke public indignation? I can conceive no more effectual way of resisting them than by the jealousy of an independent assembly, containing men who have devoted a large part of their time to the studies of history and jurisprudence—and such an assembly is the House of Lords.

The House of Lords, then, appears to be an essential equipoise in the British Constitution, and its aristocratical tendencies to have a beneficial influence in maintaining the stability of government. That they cannot be exercised to subvert popular liberty is provided for by the power of the Crown to add to the number of that assembly. Not merely is this prerogative exercised beneficially by the continual infusion of a popular element in the highest council, but also the power of ultimate resort to that prerogative, on the rare occasions when unhappily the House of Lords has opposed the deliberate consentient voice of the nation, has always been effectual to put an end to that opposition. When, for instance, the Acts for Reform of the House of Commons were passed in 1832, the majority of the peers

were persuaded from rejecting that measure by an understanding that, if they persisted in rejecting it, the king would create a sufficient number of peers to insure its passing.*

The advantages of this prerogative are well shown by a most thoughtful writer on the Constitution of England—M. de Lolme. Speaking of a measure for limiting the number of the peerage, which in the reign of George the First passed the House of Lords, and was countenanced by the ministry, but was rejected by the Commons, he observes, "When the bill was in agitation for limiting the House of Peers to a certain number, its great constitutional consequences were scarcely attended to by anybody. The king himself certainly saw no harm in it, since he sent an open message to promote the passing of it; a measure which was not, perhaps, strictly regular. The bill was, it appears, generally approved out of doors. Its fate was, for a long time, doubtful in the House of Commons; nor did they acquire any favour with the bulk of the people by finally rejecting it; and Judge Blackstone, as I find in his Commentaries, does not seem to have thought much of the bill, and its being rejected, as he only observes, that the Commons wished to keep the door of the House of Lords as open as possible! Yet no bill of greater constitutional importance was ever agitated in Par-

* Roebuck's "History of the Whig Ministry," Vol. II.

liament; since the consequences of its being passed would have been the freeing of the House of Lords, both in their judicial and legislative capacities, from all constitutional check whatever, either from the Crown or the nation. Nay, it is not to be doubted that they would have acquired, in time, the right of electing their own members, though it would be useless to point out here by what series of intermediate events the measure might have been brought about. Whether there existed any project of the kind among the first framers of the bill does not appear; but a certain number of members of the House we mention would have thought of it soon enough, if the bill in question had been enacted into a law; and they would certainly have met with success had they been contented to wait, and had they taken time. Other equally important changes in the substance, and perhaps the outward form of the government would have followed.”*

The argument most usually alleged by those who would destroy or diminish the power of the House of Lords is that, though it cannot reject, it delays liberal enactments. It seems sufficient to answer that the delays to improvements in the laws and institutions are now generally to be attributed chiefly to the excessive power of *vested interests* in the House of

* De Lolme, on the “Constitution of England,” Book II. Chap. xix.

Commons. To those who see nothing of Government but its external operations, it seems incomprehensible that long series of years frequently elapse before most flagrant and acknowledged abuses are corrected. The secret of the delay will be explained by observing that, in every such case, some numerous body derives wealth or power from the abuse; and that persons interested in a number of such abuses make common cause for mutual protection, and by their combination and intrigues can, for a long period, effectually resist reform. By reference to actual experience it will be found that the delay of public improvements occurs chiefly in the House of Commons. It is in the more impartial election of that body that the remedy of this great evil is to be sought for.

CHAPTER VII.

PROCEDURE IN PARLIAMENT.

THE methods of procedure of the two Houses of Parliament in their legislative capacity are, in many respects, similar. The formalities with which measures are considered by the two branches of the legislature are nearly the same; their usages differ chiefly with respect to communications from the Crown, the admission of members, and the officers presiding in their deliberations.

The Standing Orders of both Houses are collections of rules which they have, from time to time, severally agreed upon, and which, unless rescinded or altered, endure from one Parliament to another. In the House of Lords, these orders are carefully recorded in the roll of standing orders, and are published. Sessional orders are also made, which endure only for the sessions in which they are made. There are also many rules and usages of which the autho-

rity is the settled practice of observing them in both Houses.

It has been mentioned, that each new Parliament meets for the despatch of business on a day appointed by the Crown. The members of both Houses meet on that day in their respective chambers, and the Lords' Commissioners send a message to the Commons, desiring their attendance to hear the Commission read, which has been issued under the Great Seal, for the opening and holding of Parliament. This being done, the Lord Chancellor acquaints the House of Commons of the Queen's desire that they appoint their Speaker, and present him on the morrow for Her Majesty's approbation.

The Commons then withdraw ; and in the House of Lords, at its next meeting, the Lord Chancellor, and other lords then present, take the oaths of fidelity, of supremacy, and of abjuration, or the oath to be taken by Roman Catholics in lieu thereof. Peers newly summoned or created are introduced in their robes, between two other peers of their own dignity, also in their robes, and present their writs or patents.

In the Commons, meanwhile, a member is proposed for the office of Speaker, by some influential member of that assembly—generally by the “minister” to whom the administration then in office have assigned the principal part in defending ministerial measures in that House, and who is usually desig-

nated as "leader of the House of Commons." The proposition having been seconded, other candidates may be proposed; in which case a debate ensues, in which the clerk acts the part of Speaker. The candidate chosen unanimously, or by the majority, is conducted to his seat, which he takes, after having expressed his acknowledgments; and thereupon is laid on the table the mace, the ancient symbol of the authority of the Commons—that venerable "hauble" which is associated with so many eventful passages of English history—which was never yet insulted with impunity but when liberty received a wound.

On the next day of the meeting of the two Houses, the Speaker, accompanied by the Commons, proceeds to the House of Lords, and acquaints the Lords' Commissioners that the Commons have, in exercise of their undoubted right and privilege, chosen him for their Speaker, and he submits himself to the approbation of the Crown, which is thereupon declared by the Lord Chancellor.

The Speaker so chosen continues during the whole Parliament in his office, unless it be sooner terminated by his decease or resignation; in which cases a new Speaker is elected in like manner.

On the return of the Speaker to the House of Commons he takes the oaths of allegiance, supremacy, and abjuration. Subsequently the other members take the same oaths, or the oaths required of Roman Catho-

lics, or make the affirmations required of Quakers, and others who conscientiously object to take oaths.

The oath of Fidelity is an obligation to be faithful and bear true allegiance to the Queen. The oath of Supremacy is an abjuration of the doctrine that princes excommunicated or deprived by the Pope may be murdered or deposed, and a declaration that no foreign person or state hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual in this realm. The oath of Abjuration declares the Queen to be lawful and rightful Queen of this realm, denies the title to the Crown of the descendants of the Pretender, promises true allegiance to the Queen, to defend her against, and to disclose treasons and conspiracies, and to support the succession of the Crown against the descendants of the Pretender and others.

This oath is declared to be made "upon the true faith of a Christian," and the words so introduced having been judicially declared an essential part of the oath, operate to the exclusion of Jews from Parliament, though the original object of the oath was obviously to maintain the established succession to the Crown against the Pretender.

The oath to be taken by Roman Catholics promises true allegiance to the Queen, to defend her against, and to disclose treasons and conspiracies, and to maintain the succession of the Crown; renounces

allegiance to every other person claiming it, abjures the opinion that princes excommunicated may be deposed or murdered by their subjects, disclaims a belief that the Pope or any foreign person or state hath or ought to have temporal or civil jurisdiction, power, superiority, or pre-eminence within this realm, promises to defend the settlement of property, disclaims and abjures any intention to subvert the present "Church establishment," and promises not to exercise any privilege to disturb or weaken the Protestant religion or Protestant government in the United Kingdom.

When the greater part of the members of both Houses have been sworn, the Royal speech is delivered in the House of Lords (the Commons attending), either by the Queen in person, or by Commission, and the speech is read again in the two Houses separately—in the Lords by their clerk, in the Commons by their Speaker. But before this second reading, as has been already stated, it is the practice, in both Houses, to read a bill, *pro formâ*, in order to assert their right to deliberate, without reference to the immediate causes of summons by the Crown.

The next proceeding is the moving, in each House, an address in reply to the Royal speech. The Address is moved and seconded, in either House, by two of its members, chosen by the "administration," and is usually a reiteration of the substance of the sentiments

expressed in the Royal speech, paragraph by paragraph ; but important amendments are occasionally proposed. The Address of each House, when finally arranged, is presented to the Queen by the whole House, when the speech has been delivered by the Queen in person.

In both Houses it is usual for those members, who generally support the "administration," to sit on the right hand of the Speaker. The members in opposition usually take their places on the Speaker's left hand, and, among the peers, many who desire to observe political neutrality, occupy the cross benches.

The attendance of members in Parliament is not usually enforced ; but on important occasions a notice is sent to each lord, that the Lords are to attend on a particular day. Under urgent circumstances, each House will order names of its members to be *called* over, and the call may be enforced by fine or imprisonment.

The Upper House may proceed to business if only three members be present ; but in the Commons forty must be present, to enable them to commence their usual business. If forty members be not present at the time appointed for commencement of business, or if, on a division or the requisition of a member, it appear that forty members are not present, the House is immediately adjourned.

The usual Speaker of the House of Lords is the

Lord Chancellor, or the Lord Keeper of the Great Seal ; deputy speakers, to officiate in their absence, are always appointed by Royal Commission. In absence of the appointed Speaker and the deputies, the Lords may choose another Speaker. In the House of Commons there is no provision for supplying the place of the Speaker in his absence.

Minutes of the Proceedings of the Upper House are taken by its clerks, and are published daily. The Votes and Proceedings of the House of Commons are similarly recorded, and are printed and distributed among the members day by day.

Strangers were formerly excluded from the Houses when sitting, but now are admitted on sufferance to certain parts of the Houses, and it is very unusual to require them to withdraw, except during divisions. Galleries are specially set apart for the accommodation of reporters for all the London daily newspapers.

The communications of the Crown to Parliament may be made in person, or by Commission—as when the Royal speeches are made at the commencement and end of a session, or when the Royal assent to bills is given—or by message under the sign manual, relating usually to public events, the Royal family, or supplies. An oral message may be delivered by a “minister” in Parliament, by Royal command, as when a member of either House has been arrested for any crime by order of the Crown.

Addresses are presented to the Crown by either House separately, or by both jointly, respecting matters of foreign or domestic policy, the administration of justice, confidence in the "ministers," or expressing congratulations or condolence. When such addresses have been presented by the whole Houses, the Queen's answer is reported by the Lord Chancellor or Speaker. The reply to an address presented on behalf of either House by certain of its members only, is reported by one of them, or by a member of the Royal household.

Parliament is prorogued either by Commission or by the Queen in person. In either case the Commons attend in the House of Lords, and if the Queen be present, the Speaker, addressing her, adverts to the most important labours of the Commons during the session. The Royal assent is then given to bills which await it, and the Queen reads a speech on public affairs which has been prepared by the "ministers." The Lord Chancellor then acquaints both Houses of Her Majesty's pleasure that Parliament be prorogued to the day mentioned. If the Queen be not present, the speech of the Speaker of the House of Commons is omitted.

All questions submitted to the decision of Parliament are embodied in the form of substantive motions, which every member has liberty to make after due notice. In the House of Lords, the pressure of busi-

ness is not so great as to require very stringent rules as to notices, but in the Commons they must be entered in the *Order-book*, within a fortnight of the time intended for proposing the motions so entered, and the times for considering such motions are strictly limited.

At the other times of sitting of the House of Commons, precedence is given to *Orders of the Day*, or matters which the House has previously agreed to consider on a particular day; among them are generally ministerial measures.

The time allotted for considering motions on the *Order-book* being restricted, and the anxiety on the part of members not in office to secure hearings being considerable, it is found necessary that their order of precedence be determined by lot.

Motions in the Lower House, when proposed and not seconded, are immediately dropped. The modes of superseding or evading a question in either House are by adjournment, by amendment, by moving that the orders of the day be read, or by moving the "previous question," *i. e.*, the question whether the proposition shall be decided on by the House at present. The *previous* question is so called because it is precedent to the main question. The words of the motion for the previous question are, "that this question (*i. e.*, the main question) be now put." If this be resolved in the negative, the main question cannot be put at that time, but may be brought forward on another day.

Committees of Parliament are either those of the *whole House*, of which the functions will be stated in the next chapter, or *Select Committees*. Each House appoints numerous committees of its members to inquire into, and report on, matters on which it requires information. A select committee cannot be moved for in the House of Commons without notice; and the mover is expected to ascertain that the members whom he proposes to nominate on the committee are willing to serve on it, and he must give notice of their names. In committees of the House of Commons, strangers are usually permitted to be present when witnesses are examined, and members of the House claim the right to be present during the examination of witnesses, and the deliberations of the committee; but from secret committees members not on them are excluded.

The evidence is taken in short-hand and printed, proof-sheets of his own evidence being often sent to each witness for verbal revisions.

Witnesses may be summoned to give evidence at the bar of either House, or before its select committees, and to produce documents, and obedience to the summons may be enforced by imprisonment.*

* Before the Lords evidence is given on oath. The Commons have no power of administering oaths, except in Election Committees. The Lords have, and the Commons have not, power to impose fines and to imprison beyond the close of the Session.

It is the general rule of both Houses not to decide on questions substantially the same twice in one session. When, however, a measure has passed the Commons, and been amended in the Lords, occasionally, to avoid delay, the Commons will, if the Lords' amendments be acceptable to them, reintroduce the bill in their own House with those amendments incorporated. This proceeding is necessary when the Lords' committees insert clauses imposing rates, tolls, and charges on the people, as the Lords cannot originate such clauses without infringing the privileges of the Commons. The reintroduction of bills incorporating the Lords' amendments is founded on the report of a committee appointed by the Commons to inspect the Lords' journals.

No member is in order who speaks when there is no question before the House, unless he conclude with a motion ; but it is the practice in both Houses to permit questions to be put to officers of the Crown respecting their public acts, and to members who have undertaken to bring forward particular measures or motions. In framing the question and answer considerable ingenuity is sometimes exhibited on the one hand in extracting information ; on the other, in maintaining that official reserve which is sometimes dictated by wisdom, and more frequently by an affectation of it.

Another occasion on which members are fre-

quently permitted to speak though there be no question before the House, is when the defence or explanation of their public conduct is required to free them from personal imputation.

Members are not permitted to speak a second time on any motion, excepting by way of explanation of their previous remarks, or in committee, or in reply at the end of debate on those motions made by them, which are not merely formal, nor instructions to a committee of the whole House, nor amendments. Members are also restrained from referring to prior debates ; from reflecting on the votes of the House ; from alluding to debates in the other House ; from using the Queen's name disrespectfully or to influence the decision of the House ; from offensive and intemperate expressions with respect to the character of Parliament or its members. In the House of Lords the authority of the Speaker to maintain order is not paramount, as in the House of Commons.

Divisions in the Lords are effected by the "non-contents" remaining within the bar, and the "contents" going below it. After their numbers have been counted, the votes by proxy are declared orally. In the Commons, where votes by proxy are not allowed, on a division the "ayes" retire into one lobby and the "noes" into another, and as they return marks are placed against their names printed in lists.

Proxies of the House of Lords are not given in committee nor in judicial causes. In the Commons it is a frequent practice for members to "pair off;" that is, for two of opposite opinions to agree to be absent from the division on a particular question, or during a specified period.

All the peers have the right of entering, without leave, on the journals of their House, Protests stating their objections to any of its Votes.

CHAPTER VIII.

PASSING OF PUBLIC BILLS.

A BILL in Parliament is a proposition for a law ; and when assented to by the three branches of the legislature, becomes a Statute of the Realm or Act of Parliament.

By the ancient method of enacting laws, bills were prepared in the form of *petitions* from the Commons. The modern practice with regard to bills is nearly the same in both Houses ; and all bills, except for a general pardon, which proceed from the Crown, originate in the Lords or Commons. The latter have the privilege—all-important for maintaining the balance of the constitution—of originating all grants of supplies and all bills imposing charges on the people. The Lords claim the right of commencing all bills for restitution of honours

Bills are of two classes—public and private. The latter are subject to special regulations. The first stage in passing a public bill is, in the Lords, the pre-

senting it ; in the Commons, a motion for leave to bring it in. The motion is usually accompanied by an exposition of the character and objects of the proposed measure if it be of an important nature. If the motion be carried, the mover and seconder, and sometimes other members, are instructed by the House to prepare the bill and bring it in. A frequent preliminary to the introduction of bills is a resolution of the House or of a committee of the whole House. Bills relating to religion, or trade, or public money must originate in such a committee. In preparing the bills, dates and amounts of salaries and charges are left blank or printed in *italics*. After the bill has been received, the question that the bill be read a *first* time, is seldom objected to. Every public bill is printed, except ordinary supply bills, which embody the votes of the Committees of Supply and Ways and Means, and the annual Mutiny bills, of which the clauses are usually the same from year to year.

The most important stage of a bill is the *second* reading, on which the discussion of the principle of the bill is usually taken, unless deferred by agreement to a later stage. The course most usually taken to prevent a second reading is to move by amendment that the bill be read after an interval of three months, or six months, or some other period extending beyond the probable duration of the session. If the bill affect private interests, counsel may be heard in

defence of them, and if this hearing be agreed to, it usually takes place at the second reading.

After the *second* reading, a motion is made that the bill be *committed*, and rarely opposed. When the House of Commons resolves itself into *Committee of the Whole House*, the mace is removed from the table, and the Speaker leaves the chair, which is taken by the chairman, who is usually the chairman of Ways and Means. The House of Lords appoint a Chairman of Committees at the beginning of every session.

In *committee* the bill is considered paragraph by paragraph. The chairman calls out each clause in succession, together with the marginal note, stating its nature, and puts the question that the clause stand part of the bill, or, when amendments on it are carried, that the clause as amended stand part of the bill. The blanks in the bill are filled up, and the parts printed in italics are settled as they occur.

If the committee of the House cannot at one sitting go through the whole bill, the chairman in the Commons reports progress, and asks leave to sit again. In the Lords, the chairman moves that the House be put in committee on a future day.

When the labour of the committee is finished, the Speaker resumes the chair, and the chairman finally reports on the bill. When the report is received, the bill is, in some cases, read a third time immediately ;

in others, the third reading is postponed, or the bill is recommitted to a committee of the whole House or to a select committee. The bill is also usually reprinted with the amendments. When the House takes the report into consideration, the amendments in committee are first submitted to the decision of the House, and then other alterations which may be proposed.

The bill is engrossed on parchment before the third reading, and amendments at that stage are to be avoided on account of the trouble of amending the engrossment. After the third reading the question generally follows immediately that the bill do pass. The final question determines the *title* of the bill.

The bill when passed in one House is sent to the other. If it agree to the bill without amending it, it is forthwith put in the Commission for receiving the Royal assent. But if a bill be returned from either House with amendments, they must be waived by the other House, or some agreement must be come to respecting them ; otherwise the bill is lost.

This agreement is obtained by way of *conference* between the two Houses, in which they are represented by members of both severally appointed by them to be *managers* of the conference. Usually the reasons for disagreement of either House to the amendments of the other having been drawn up in

writing, are simply read and delivered at the conference. These proceedings are reported by the managers to their respective Houses. If the reasons against amendments appear satisfactory to the House to which they are offered, it sends a message to the other House that the amendments are not insisted on. But if part or the whole of the amendments be insisted on, a second conference may be had. A third conference is not allowed by the usage of Parliament.

This is the mode of procedure in ordinary conferences. In *free conferences* the managers do not merely communicate the reasons reduced to writing, but urge their own arguments, in order to effect an agreement between the two Houses.

The other occasions for which conferences are held are the communication by either House of resolutions or addresses, to which the concurrence of the other House is desired, communications concerning procedure in or privileges of Parliament respecting bills which have passed one House, and respecting matters of public security.

The Royal assent is most usually given by *Commission* by the Queen, signed with her own hand. The Commission is read at length in the Upper House, the Commons attending, and the titles of the bills being read, the clerk of Parliament signifies the assent in Norman French. For a bill of supply the form is,

"*La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult*,"—[the Queen thanks her good subjects, accepts their bounty, and so wills it]. To a public bill, "*La reyne le veult*,"—[the Queen wills it]. To a private bill, "*Soit fait comme il est désirée*,"—[be it done as is desired]. The form of denial of assent was very courteous, "*La reyne s'avisera*,"—[the Queen will consider].

In cases requiring unusual expedition, bills are frequently passed through all their stages in the same day, and even by both Houses, by a suspension of standing orders and the usage of Parliament. No bill can pass thus rapidly without the general concurrence of the Houses.

CHAPTER IX.

PASSING OF PRIVATE BILLS.

“ IF I were required,” says De Lolme,* “ to point out the principal events which would, if they were ever to happen, prove immediately the ruin of the English Government, I would say,—The English Government will be no more, either when the Crown shall become independent of the nation for its supplies, or when the representatives of the people shall begin to share in the executive authority.”

The separation of government into its two component parts, the Legislative and the Executive, is the gradual result of improvements in the Constitution. In the earlier history of a nation its Executive and Legislative government are almost unavoidably conjoined. It is only as liberal institutions become progressively established, that the importance of separating the two functions of government is perceived and insisted upon.

* “ Constitution of England,” Book II. Chap. xix.

Of our own Constitution this separation has long been considered a vital principle, yet even now it is not completely carried into effect. It seems clear that law becomes more and more perfect, accordingly as it consists more and more completely of general rules which are adequate for the just public control of all private interests and actions. It would, indeed, require omniscience to anticipate by legal provisions every possible contingency which can call for public interference ; but though the imperfection of human wisdom renders such a universal code unattainable, it is clear, on the other hand, that the nearer the approach to universality is, the more complete will be the system of laws. *Speciality* in its public actions is a characteristic of barbarous and despotic governments. Cadi law and Lynch law are instances of that rude uncertain interference of public power which infallibly mark an uncivilized, that is, an unconstitutional, state of society.

It is very interesting, very instructive, to note how tenaciously this principle is observed in nations of the Anglo-Saxon race, which seems almost instinctively imbued with a knowledge of the fundamental conditions of free government. It seems generally understood in this country that it is a less evil that wrongs should occasionally escape remedy of law, than that the general course of law should be interrupted to meet particular cases. This spirit of the people is

remarkably evinced by the practice of settling doubts as to their rights and liberties, by appealing to judicial investigation in cases which would appear trivial without reference had to the principle at stake. A question, perhaps the most momentous which was ever submitted to an English legal tribunal, was thus brought to issue by JOHN HAMPDEN in 1639, on his refusal to pay an impost of no more than twenty shillings levied on him without the authority of Parliament.

The machinery which renders an assembly most efficient for legislative purposes, renders it also one of the worst that could be constituted for judicial purposes. The conflict of debate—the representation of constituencies—and the consequent number of members required in a legislature—are incidents antagonistic to the right exercise of executive functions. The due discharge of them requires not debate, but authoritative judgment; not numerous representation of constituents, but unity and independence of them. Moreover; a representative assembly is not merely inefficient as a judicature, but by diversion of its attention from its primary object—legislation—loses a part of its efficiency for the discharge of that function also. The possession of complete judicial power by the legislature would enable it to substitute for general laws, laws *pro re natâ*.

The opinion has been expressed—and, I venture to say, is a just one—that the inadequacy of the House

of Commons to discharge the whole of its legislative duties arises, in a great degree, from the enormous pressure of its private business. In passing private bills it, in effect, generally exercises judicial functions. The same remark does not, however, apply to the House of Lords, so far as relates to its character as a supreme Court of Judicial Appeal, because, when it assumes that office, none but the few who are known as "law lords" participate in it.

The enormous number of bills, relating to the construction and management of railways and other works, engages so large a part of the labours of the House of Commons, that comparatively little time and strength are left for the discharge of its more general duties. If the question be asked, how it comes to pass that year after year measures of the most apparent utility are postponed, the explanation seems to depend, in a great measure, on the fact that the House of Commons is so overwhelmed with business, extra-legislative, that measures within its proper province cannot obtain a due share of its attention.

It is an ungracious observation, but one which the due consideration of the subject requires, that improper influences operate on the passing of private bills, and that the results of legislation, especially with regard to public companies, are regarded with very general dissatisfaction. It is, I believe, undeniable that the practice is common of *canvassing* for the

votes of members of the House of Commons, on many occasions where private interests are affected. A practice more subversive of the integrity and efficiency of the legislature—more detrimental to its dignity—more destructive of the national respect and confidence which it ought to possess, can hardly be conceived. Members of Parliament, happily, are rarely charged in modern times with receiving bribes, and no such case of direct pecuniary corruption has been publicly known for many years. But on the other hand, it is almost certain that private persuasion and the operation of arguments, urged not in the assembly but in the closet, affect the divisions of the House, where large vested interests are concerned. The dealings of Public Companies with their rivals are believed to be very much influenced by estimates of the number of parliamentary votes, which they are severally able to secure by the means in question. Even Courts of Law have recognized contracts between railway companies and landed proprietors, in which “Parliamentary influence” was the principal consideration.

Incidental to the prevailing methods of carrying contested private bills through Parliament are enormous pecuniary expenses which contribute to render the tolls and rates authorized by those bills either exorbitant or unremunerative, or both.

The canvassing for parliamentary votes is not confined to persons interested in public works and

monopolies. The practice is adopted, also, in aid of efforts to remove taxes affecting powerful classes, and on similar occasions. For these cases it is not easy to devise a complete remedy. In the present state of financial science a general system of taxation could not be prescribed which would relieve Parliament of the necessity of investigating separately the shares which different bodies of the community ought to contribute. But with respect to the power usually given to railway and similar companies, it is quite conceivable that general laws might be devised, of which the application to the individual cases might be left advantageously to a branch of the Executive. The application of certain general Acts is already thus intrusted with advantage to Government Boards, subject to parliamentary revision and control; and the small number and responsibility of the persons who constitute such Boards render them, when acting in a strictly judicial capacity, as inaccessible to private importunity as the Judges themselves.

In order to prevent surprise of persons affected by private bills for the execution of railways, and other purposes, the Standing Orders require the issue of notices of the intention to apply for the enactment of such bills. The Standing Orders require, further, in order to check undue speculation, a deposit of a portion of the money requisite for carrying out intended works; and the first step towards passing such bills

is to ascertain that the Standing Orders with respect to them have been complied with. The bills are then usually referred to select parliamentary committees. Formerly the number of members on these committees was too great to allow due responsibility to be attached to the members. The practice of canvassing them for their votes prevailed very extensively, and it frequently occurred that at the conclusion of an elaborate and expensive inquiry, members who had taken no part in it—who had heard neither evidence nor arguments as to the merits of the bill—crowded into the committee-room, and by their votes entirely neutralized the effect of the preliminary investigations. The practice, however, with respect to committees on private bills is now amended. The method of appointing the committees is entirely altered, the number of each being reduced generally to five members in railway bills, and the members being chosen by a general committee of selection in such a manner as to secure, as far as possible, freedom from local influences. Before the select committee, on each opposed private bill, a severe examination takes place, in which counsel may be employed, and minute evidence of engineers and other witnesses taken. The decision of the committee as to the merits and nature of a private bill is reported to the House. An adverse decision of the committee is generally fatal to the further progress of the bill;

Parliament, however, by no means delegates to the committee the absolute power of rejecting or authorizing the proposed measure.

The modern method of dealing with private bills is, doubtless, a great improvement on that which formerly existed. But the expense, the strife and intrigues which attend the investigation of opposed railway bills, and the enormous prices at which lands required by them are purchased from the proprietors, whose parliamentary opposition is feared, are clear evidences that the system is still unsatisfactory.

It seemed desirable to indicate, thus plainly, what appear to be the defects of legislation on private bills, not only on account of the vast interests affected by them, but also for the sake of illustrating the importance of separating legislative and executive functions. Generally it will be found that the instances in which dissatisfaction is most frequently expressed with respect to results of the operations of the Government of this nation, are the very instances in which either the Administrative Government acts legislatively, or the Legislature acts executively. That the separation of the two functions is essential to constitutional liberty may be also inferred negatively from the fact that "paternal" governments, which profess to exempt their citizens from constitutional responsibility, are most anxious to maintain a combination of legislative and executive functions.

CHAPTER X.

PARLIAMENTARY DOCUMENTS.

IN the exercise of their duties the two Houses of Parliament receive a very large number of petitions, returns, papers, records, reports, and other documents, which are either ordered by them, or presented to them by the Royal command or otherwise.

The Bill of Rights, 1 W. and M., sess. 2, c. 2, declares that it is the right of the subjects to petition the Crown, and that all commitments and prosecutions for such petitioning are illegal. Anciently, when Parliament undertook greater judicial functions than at present, petitions were commonly presented for redress of private grievances, and *Receivers* and *Triers of Petitions* were appointed, to whom all people were invited to resort. These officers have long ceased to exercise their ancient offices of examining the cases and submitting them, if necessary, to the decision of Parliament; but they are still appointed

by the House of Lords at the opening of every Parliament.

The form of petitions in modern times is not very strictly prescribed. They are addressed, "To, the right honourable the Lords Spiritual and Temporal in Parliament assembled," or, "To the honourable the Commons [or knights, citizens, and burgesses] of the United Kingdom of Great Britain and Ireland in Parliament assembled," and commence, "The humble petition of — sheweth," the blank being filled up with the names of the petitioners, if but few, or otherwise with a general designation of them. Then follow the general allegations. The petition must conclude with a prayer; otherwise it is a remonstrance and will not be received, and the concluding words are generally, "And your petitioners as in duty bound will ever pray," to which are appended the signatures.

The statute 13 Car. II. c. 5, was directed against tumultuous petitioning. By that statute a penalty of 100*l.* and three months' imprisonment was imposed for soliciting or procuring the names of above *twenty* persons to any petition to the king or either House of Parliament for any alteration in Church or State, unless the contents of the petition were approved by three justices of peace, or the majority of the grand jury, or in London by the lord mayor, aldermen, and common council. The like penalty was

imposed for presenting to the king or Parliament a petition accompanied by more than *ten* persons. The limitation of the number of persons signing a petition to Parliament is now however obsolete.

A petition must be written on paper or parchment, not printed; must be in English, or accompanied by a translation; must not contain erasures and interlineations, nor have documents annexed to it. The signatures must be autograph, nor will the signature of an agent for others—as the chairman of a public meeting—be recognized as equivalent to theirs. Forgery and fraud in the preparation of petitions may be punished as breach of privilege. All petitions are required to be presented by members of the House to which they are addressed, except petitions of the Corporations of London and Dublin.

The subject of a petition presented to the House of Lords may be debated, but in the Commons the member presenting a petition, not relating to a private bill, is required to confine himself “to a statement of the parties from whom it comes, the number of signatures attached to it, and of the material allegations in it, and to the reading of the prayer of such petition.”* The matter of the petition is not to be brought under discussion, unless it complain of some present personal grievance for which there may

* 97 Commons' Journals, 791.

be an urgent necessity for providing an immediate remedy.

Public petitions to the House of Commons are usually referred to the Committee on Public Petitions, by whom they are classified, analyzed, and sometimes printed at length. The reports of this committee appear twice a-week.

The printed parliamentary documents are either the results of the labours of either House and its members, as bills and reports of select committees, with the evidence taken by them, or are obtained from external sources. The latter class comprises, 1. Returns to the Orders of either House. 2. Documents obtained by address to the Crown. 3. Documents "presented by command" of the Queen. 4. Documents presented in compliance with Acts of Parliament. Returns to the Orders of the House are made usually by those public departments which are under the control of the Treasury, as returns from the Customs, Excise, Post Office, or Board of Trade. The documents obtained by address are generally issued from offices subject to the Secretaries of State. Among documents "presented by command" are the reports of Royal Commissioners, who have been directed by Commission under the Royal sign manual, to inquire respecting matters of public importance.

The returns to Orders, or abstracts of them, are

very generally printed, and in the House of Commons a select committee, called the Printing Committee, regulates the manner of printing. With but few exceptions, the papers printed are sold at the offices for sale of public papers at very moderate rates ; they are distributed to members of Parliament gratuitously. In both Houses the papers are systematically classified and indexed. General indices are also published to facilitate reference to these documents.

The value and extent of the information which they afford on public affairs can scarcely be over-estimated. They include an immense collection of statistics respecting the revenue and expenditure of the country, commerce, navigation, salaries, trades, manufactures, population, army and navy, and administration of justice. The reports contain most elaborate discussions of questions of practical science, public instruction, political economy, constitutional questions, international and colonial relations, jurisprudence, public health, public works, and almost every other topic which requires the consideration of Parliament. The principal inconvenience which arises in the use of these important works, popularly known as " Blue Books," arises from the very copiousness of their information.

CHAPTER XI.

SUPPLY AND WAYS AND MEANS.

By the famous Petition of Right of the first Parliament of Charles I., A.D. 1628, it was enacted "that no man be compelled to make or yield any gift, loan, benevolence, tax, or such like charge, without common consent of Parliament; that none be called upon to make answer for refusal so to do."* To this bill, when presented to the king, he first sent an evasive answer. "The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs or oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience obliged as of his own prerogative." The opposition which this answer excited was braved for some time by the Court, but the king was induced, when the peril which his refusal to ratify

* 1 Car. I. c. 1.

the existing national rights occasioned became imminent, to grant the Royal assent, and the petition being read anew before the whole assembly of Parliament, Charles answered by the usual form "*Soit fait droit comme il est désiré.*"

In 1678 the Commons resolved, "That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords."

The principle of this resolution is acquiesced in by the House of Lords. The House of Commons not only originates all money bills, but will not assent to any amendments of them by the Lords, except those which are merely of a verbal kind, nor to any pecuniary provisions made by the Lords, except certain penalties and tolls not levied on the nation at large.

The Commons occasionally took advantage of their power of granting supplies to join provisions of a different nature to bills by which grants were made. "Whenever," says De Lolme,* "abuses of power had

* "Constitution of England," Book I. Chap. v.

taken place, which they were seriously determined to correct, they made *grievances and supplies* (to use the expression of Sir Thomas Wentworth) go hand in hand together, which always produced the redress of them. And in general, when a bill, in consequence of its being judged by the Commons essential to public welfare, has been joined by them to a money bill, it has seldom failed to *pass in that agreeable company.*”

This practice of the Commons of *tacking*, as it is termed, foreign matters to bills of supply would, unless resisted, have entirely destroyed the balance of constitutional power, and have rendered the Lower House virtually independent of the other branches of the legislature. The House of Lords has, however, successfully resisted this invasion of their power. By an order of the House of 1702 it is declared “that the annexing any clause or clauses to a bill of aid or supply, the matter of *which* is foreign to, and different from, the matter of the said bill of aid or supply, is unparliamentary, and tends to the destruction of the constitution of this Government.”* The Lords will reject *tacking* bills sent to them from the Commons.

The supplies to the Crown are all authorized by

* “Lords’ Standing Orders,” 25. Their Lordships appear to have been more anxious about the principles of the constitution than those of grammar when they framed this order.

Act of Parliament. In the first instance, the executive government submits to the House of Commons Estimates for the sums requisite for expenses of the public service. The Commons vote no money until it be required by the Crown ; and the grants must be sanctioned by the simple assent of the House of Lords. The Royal speech at the commencement of each session requires, in a paragraph addressed to the Commons, provision for the public service, and states that estimates will be laid before them. The rules of the House of Commons to restrain hasty applications for public money, and to discourage solicitations for it, are very stringent.

All motions for imposing and applying public taxes must be referred to Committees of the Whole House ; but this formality is not required on motions for diminishing the national charges.

More than half the amount of annual expenditure, being permanently provided for by various Acts of Parliament, is applied by the Treasury at once out of the Consolidated Fund, to which the produce of all the taxes is carried. It is for the remainder of the expenditure that the Commons provide annually by specific grants.

The committees of the House, which regulate the income and expenditure of the current year, are called respectively the Committee of *Ways and Means* and the Committee of *Supply*. The chair-

man of them is elected at the beginning of a Parliament, and usually presides over other committees of the whole House. The Committee of Supply sanctions or alters each of the sums charged in the "Estimates." The office of the Committee of Ways and Means is "to consider of ways and means for raising the supply granted to her Majesty." In other words, the province of the one committee is expenditure; of the other, income.

Considerable sums are raised in anticipation of the public revenue by means of Exchequer bills. The Committee of Ways and Means, in exercise of the functions above mentioned, determines the sum to be raised by the means of Exchequer bills. The Committee of Supply of course votes the sums required for paying them off.

The Budget is an annual financial statement of the Chancellor of Exchequer to the Committee of Ways and Means. The statement includes usually an account of the income and expenditure, and of the taxes which the Chancellor of the Exchequer considers it necessary to impose, repeal, or alter, and is concluded by the submission of resolutions embodying his propositions.

The resolutions of the Committees of Supply and of Ways and Means are reported to the House for its ratification, rejection, or amendment, on a day subsequent to that on which they are agreed to. There

is this distinction between the ways in which the House deals with the reports of the two committees, that the resolutions of the Committee of Ways and Means are, when accepted by the House, ordered to be embodied in Bills, but the resolutions of the Committee of Supply are reserved to the end of the session, and are carried into effect by the Consolidated Fund (Appropriation) Bill, which authorizes the several sums voted by the Committee of Supply to be applied to the purposes designated. As a general rule, the two committees above mentioned confine their attention to the annual pecuniary exigencies of the State; and general alterations of the public burthens are considered by other committees of the whole House.

CHAPTER XII.

THE CABINET AND POLITICAL PARTIES.

IN order to assist the Crown in the discharge of its functions, the law has assigned to the sovereign several councils. Of these the principal is the *Privy Council*, or *Council-table*, a court of great antiquity, consisting of an indefinite number of Privy Counsellors, chosen by the Royal authority absolutely without patent or grant. The duties of the privy councillors, as stated in the oath of office, are to truly and impartially advise the Queen to the best of their discretion, to keep secret her council, to avoid corruption, to strengthen the Queen's council in all that they may deem good for the Queen and her land, to withstand those who attempt the contrary, and to do all that a good councillor ought to do unto his Sovereign Lady.

Formerly the privy councillors remained in office only during the King's life, and he removed them at pleasure ; but by the statute 6 Anne, c. 7, the privy

council continues in office six months after the demise of the Crown, unless sooner removed by the succeeding sovereign.

The executive functions of the privy council will be considered hereafter; its legislative functions are in modern times exercised by that portion of it which is known as the Cabinet, the Ministry, the Administration—or, *κατ' ἐξουχίαν*, the Government.

With this body rests the real responsibility of the acts of the sovereign. In modern practice those only of the privy councillors attend the Queen's councils who are summoned thereto, and these are ordinarily only those selected by her to form the "Cabinet." The selection she can alter at will; but the alteration is not a step taken without consideration of the influence of that council in the House of Commons. A "Cabinet" which is opposed by that House, cannot long remain in office, for either the measures proposed by the "Cabinet" will be rejected, and so a large part of the functions which are usually given to it will be paralyzed, or, in cases of extreme opposition, the Commons can render the alteration of the "ministry" imperative by refusing to grant supplies. This extreme course is, however, rarely taken, as a decisive rejection by the House of Commons of measures supported by the "Cabinet," or a vote expressing want of confidence in it, will lead generally to the resignation of ministers, or to what is termed an Appeal to the country, that is,

a dissolution of Parliament, and an endeavour to obtain by a new election of the House of Commons a majority supporting the "ministry" in that assembly.

Whenever a general change of the "ministry" takes place, it is usual for the sovereign to authorize some leader of the party opposed to that which relinquishes office to arrange the formation of a new "Cabinet." The person thus receiving the Royal commands usually takes the post commonly known as that of Prime Minister,* and makes a selection of his colleagues from among those persons of political eminence who are willing to co-operate with him. The "Prime Minister" is *generally* First Lord of the Treasury; the other principal members of the "Cabinet" are the Lord Chancellor, the Secretaries of State for the Home, Colonial, War, and Foreign Departments, and the Chancellor of the Exchequer. Other members hold frequently the offices of First Lord of the Admiralty, the Postmaster-General, the President of the Board of Trade, the President of the Board of Control, the Secretary-at-War, the Paymaster-General, the Chief Secretary of Ireland, and, less frequently, the Commander-in-Chief. Generally these offices are resigned with tenure of office in the "Cabinet."

* I have said "commonly known as *prime minister*," for the phrase is a Gallicism, and the office without legal authority. I am glad to say, that the words Minister, Prime Minister, Cabinet, and the synonymous word Administration, are all foreign to our language and our law.

The number of its members is from ten to fifteen persons ; but the number of persons whose tenure of executive offices depends on the duration of the "Cabinet," is much greater. The last change of "ministry," for example, occasioned about *sixty* new appointments, including those of the "Cabinet ministers," their secretaries, the law officers of the Crown, and chief officers of several Public Boards and Executive Departments. Even if the frequent change of the "Cabinet" be a State necessity, it is very difficult to see the advantage derived from a simultaneous change in a large number of subordinate offices of State. It appears to be a strangely improvident policy to dismiss from their offices competent men, when they have acquired by experience a real acquaintance with their business, on the score of their political principles, or of a fiction which supposes them to be opponents of the party in power. These extensive alterations of administrative Government add materially to the difficulties of one of the most important branches of State policy—the proper distribution of patronage.

Mr. Hallam, in his "Constitutional History," gives an account of the origin of the rise of the Cabinet, and expresses his opinion that the innovation of the power of that body has greatly diminished the responsibility of the Executive Government. In his "History of the reign of William III.," chap. xv., he remarks: "According to the original constitution of

our monarchy, the King had his Privy Council, composed of the great officers of State, and of such others as he should summon to it, bound by an oath of fidelity and secrecy. . . . It could not but happen that some councillors, more eminent than the rest, should form juntos or cabals for more close and private management, or be selected as more confidential advisers of their sovereign, and the very name of a Cabinet Council, as distinguished from a larger body, may be found as far back as the reign of Charles I. . . . During the reign of William, this distinction of the Cabinet from the Privy Council, and the exclusion of the latter from all the business of State, became more fully established. "This, however, produced a serious consequence as to the responsibility of the advisers of the Crown ; and at the very time when the controlling and chastising power of Parliament was most effectually recognised, it was silently eluded by the concealment in which the objects of its inquiry could wrap themselves. Thus, in the instance of a treaty, which the House of Commons might deem mischievous and dishonourable, the Chancellor, setting the Great Seal to it, would, of course, be responsible ; but it is not so evident that the First Lord of the Treasury, or others more immediately advising the Crown on the course of foreign policy, could be liable to impeachment with any prospect of success, for an act in which their participation could not be legally proved."

Referring to a provision in the Act of Settlement, 4 Anne, c. 8, Mr. Hallam proceeds : "It was endeavoured to restore the ancient principle by this provision in the Act of Settlement, that, after the accession of the House of Hanover, all resolutions as to Government should be debated in the Privy Council, and signed by those present : but whether it were that real objections were found to stand in the way of this article, or that ministers shrunk from so definite a responsibility, they procured its repeal a very few years afterwards. The plans of Government are discussed and determined in a Cabinet Council, forming, indeed, part of the larger body, but unknown to the law by any distinct character or special appointment. I conceive, though I have not the means of tracing the matter clearly, that this change has prodigiously augmented the direct authority of the Secretaries of State, especially as to the interior department, who communicate the King's pleasure, in the first instance, to the subordinate officers and magistrates, in cases which, down at least to the time of Charles I., would have been determined in Council."

Every member of either House of Parliament, as has been mentioned, may submit to it whatever propositions he please for new laws ; but though the duty of initiating legislative measures is not legally intrusted to any particular person or persons in Parliament, the greater number of the bills of general

importance are introduced by members of the "administration," and under its sanction. The chief measures of public policy have of late years been discussed in the "Cabinet," and drawn up under its direction before being submitted to Parliament, and a distinction generally understood exists between "Cabinet measures," which every member of the "Cabinet" is expected to assist in passing, and "open questions," in which each member of that body speaks and votes according to his individual judgment. In order to obtain concert of action in that body, it is usual for those who agree to form a new "Cabinet," to come beforehand to a mutual understanding as to the nature of the political co-operation which their individual opinions will permit, and the class of measures which are to be deemed open questions.

The permanence of any particular "Cabinet" usually depends on two conditions—concert among its members, and the power of carrying its measures through Parliament. If the majority of both Houses be unwilling to accept them, a change of the "ministry" becomes soon inevitable. It may be that temporary exigencies require the continuance of a "ministry" for some time after it ceases to command majorities in Parliament, and the adverse majority may forbear to urge an immediate dissolution of the "Cabinet," from considerations of inconveniences which would arise from the dissolution taking place before another set

of public men can be found to succeed to office. But the "ministry" in such case exists only on sufferance, and that sufferance will not long continue.

Consequent on the system here described, is the division of Parliament into two principal parties—the *ministerial party*, and the *opposition*.

There may be numerous sections in Parliament, representing different classes of politics, and there is also an increasing number of independent members, who profess to decide each question on its own merits, independently of party considerations. But so long as the duration of the "Cabinet," its power, and patronage, depend on a ministerial majority, there must always be the two principal parties which are just mentioned; and the distinction between them, as it affects the practical working of Government, is much more important, constitutionally considered, than that of sects which represent diversities of opinion only. It seems, therefore, expedient to consider here the legislative powers of the Cabinet, and of parties, under one head, on account of their mutual dependence. As the House of Commons is usually the most active in effecting changes of the "ministry," its existence most frequently depends on the relative numbers of the ministerial party, and the opposition, in that House.

The relative amounts of advantage and disadvantage of the system of party (for there are both)

deserve attentive consideration ; for the influence of the system has not only been for a long time paramount in legislation, but affects also the whole administrative Government. Not only are the highest offices of the Executive Government subject to party control, but the subordinate executive offices are so also. Lord John Russell thus describes this practice as it existed thirty years ago, when, however, the party system was much more systematically carried out than at present. " The minister seeing his advantage, has of late years more completely organized and adapted this kind of patronage to the purpose of parliamentary influence. When an office in the Stamp or Post Office is vacant, the Treasury write to the member for the county or borough voting with the Government, and ask for his recommendation. Many applications of course are made to him by his constituents, and by him to the First Lord of the Treasury."* Since that passage was written, the evil to which it refers has been, to a considerable extent, lessened, but the power still remains to an unscrupulous "minister" of increasing his influence in Parliament, by gratifying members of it with nominations to offices of which he has the patronage.

The highest judicial officer in the State—the Lord Chancellor—goes out of office with his party, and formerly even the nomination of Bishops chiefly

* " History of the Constitution."

depended on their political power—though now happily an increased regard for public decency would generally restrain a “minister” from again inflicting that disgrace and scandal upon the Church.

So general has been the system of party that it has introduced a code of duties of its own, a peculiar set of rules which political men have been supposed to be bound in conscience to obey—an artificial morality considered next in importance to the real moral law, and sometimes much more diligently observed.

Let us hear how one of the greatest of political orators described and defended this system. “Party,” says Burke, “is a body of men united for promoting, by their joint endeavours, the national interest upon some particular principle on which they are all agreed. For my part, I find it impossible to conceive that any one believes in his own politics, or thinks them to be of any weight, who refuses to adopt the means to have them reduced into practice. It is the business of the speculative philosopher to mark the proper ends of government. It is the business of the politician, who is the philosopher in action, to find out proper means towards those ends, and to employ them with effect. Therefore, every honourable connexion will avow it as their first purpose to pursue every just method to put the men who hold their opinions into such a condition, as may enable them to carry their common plans into execution, with all

the power and authority of the State. As that power is attached to certain situations, it is their duty to contend for those situations: without a proscription of others, they are bound to give their own party the preference in all things, and by no means, for private considerations, to accept any offers of power in which the whole body is not included, nor to suffer themselves to be led, or to be controlled, or to be overbalanced in office or in council by those who contradict the very fundamental principles on which their party is formed, and even those on which every fair connexion must stand.”*

The obligations of party are thus set forth in a tract which has been pronounced “one of the few standard works on the science of Government which the world possesses,” by Lord John Russell, in his treatise already cited,† where he discriminately weighs various advantages and disadvantages of party.

The following extract seems to give an accurate summary of his arguments. “Among the bad effects of party is to be reckoned the want of candour it necessarily produces. Few men can enter into the heat of political contention, backed by a body of friends who animate and support each other, without

* “Thoughts on the Cause of the present Discontents.” 3rd edit. 1770.

† “History of the Constitution,” Chap. xvii.

attributing to their adversaries intentions and motives of which they are no more capable than themselves. Another evil is, that men become unwilling to give way to the natural bent of their minds, when their understandings would lead them to admit any error upon which their adversaries have insisted, or to render them liable for weakness and inconsistency.

. . . In attributing this evil to party, I by no means intend to lay upon the same cause the blame of the exaggeration which accompanies political discussion. Such exaggerations I believe to be inevitable Nor do I impute to party the corruption by which votes in Parliament are obtained. Some persons, I know, imagine that a minister has recourse to corruption, only because it is necessary to strengthen himself against the opposition. But it is evident that in a free Government like ours, the ministers will always make use of the influence of money and patronage that is in their hands to procure themselves adherents. For a minister knows very well that he must have adherents. He cannot reasonably found his administration on the support which he may be able to obtain by his arguments in favour of each particular measure. Now, of the two ways of procuring adherents—the attachment of interest, and that of party—party is by far the best Party, therefore, instead of being the cause of corrupt and undue influence, is often a substitute for it. . . . The good

effects of party in this country are numerous and weighty. One of the chief of them is, that it gives a substance to the shadowy opinions of politicians, and attaches them permanently to steady and lasting principles. . . . The union of many in the same views enables a party to carry measures which would not otherwise gain attention. There is many a proposition eminently useful, yet not calculated to catch popular favour, which, by the stout and strong working of a party, at length becomes law The greatest benefit of all that is conferred by party is, perhaps, that it embodies the various opinions of the nation for the time being There may be a revolution in this country, but it is hardly possible that the country should not first try what may be done by change of councils."

Lord Brougham, also, in his discourse on the "Objects, Pleasures, and Advantages of Political Science," observes, that "it must be admitted on all hands that there is no greater evil in any country than party violence—the abuse of that which, kept within bounds, is an advantage, and may be the means of preserving public liberty and promoting general improvements—namely, the honest combination of statesmen for public purposes."

I shall endeavour to shield myself from the apparent presumption of differing from the high authorities which are above cited, by remarking, in the

first place, that they have regard to political exigencies which have subsequently, in a great measure, ceased to exist. After careful examination of a large number of published authorities on this subject, the disadvantages of party appear to me to greatly preponderate over its advantages. A Parliament, I venture to submit, ought, if possible, to frame laws in a spirit of judicial calmness and investigation, which is the very *antipos* of party spirit. The eminent writers quoted referred to a period when a judicial spirit, which has more recently begun to grow up in the legislature, was unknown and unanticipated, when, moreover, the measures to which the energies of Parliament were principally devoted were of a kind to continually incite party spirit; whereas, the measures which henceforth will require the chief attention of Parliament, will deal with difficult social problems, beset with complicated details, and requiring the acutest powers of investigation for their solution.

In the second place, the question of parties has been frequently obscured by using the word "party" in two different senses—a *legislative instrument* and a *sect of opinion*. A large part of the debate on the question may be dismissed from our consideration if the distinction here mentioned be carefully kept in view. The word "party" will be here used in the former sense exclusively.

The perpetuation of party, then, as a *legislative*

instrument, depends almost entirely on the present practice of excluding from the chief executive offices different political sects in succession, and the consequent dependence of the duration of a "ministry" on the party strength which it can command; and the evils of this practice appear to be very weighty indeed.

No one will contend that party government is the best conceivable. It may be said, that to devise a better is to devise a mere Utopian scheme,—that taking men as they are—subject to the influence of passions, prejudices, and self-interest—you cannot expect a nearer approach to perfection in the practice of legislation. But no one can contend that the system has the quality of optimism.

For no one will contend that that is the best conceivable system which involves the resignation of competent and incompetent Executive officers together, an able Chancellor of the Exchequer, with an incompetent Postmaster-General, a learned and upright Lord Chancellor, with an unsuccessful Home or Colonial Secretary. No one will contend that it is better to discuss questions with party vehemence than with dispassionate deliberation. No one will contend that parliamentary strategy is an admirable instrument for public good. No one will contend that good government is promoted by the incessant obloquy of the opposition press, and by hostile instead of candid

criticism. No one will contend that solicitation for place as the price of votes, and the distribution of important offices, in such manner as to procure to the "minister" adherents, is the system best calculated for the efficiency of the public service. No one will contend that the office of a "whipper-in," or nominated solicitor of votes is a boon to the constitution. Nor will it be seriously argued that those who initiate laws ought to be continually exposed to the temptation of preferring such as promote the strength of their party, and of neglecting measures of greater value but less political interest. Lastly, it will be difficult to contend that legislation should be a State mystery, of which the "minister" possesses the arcana, and not a manifest application of the rules of truth and justice which all men may apprehend.

If, then, the party system have its evils, the question is reduced to this—to what extent is it necessary to endure those evils in order to avert greater? Can no system be devised which avoids both?

To this question time is bringing the answer. If I understand aright anything of the teachings of modern history, they are gradually inculcating the lesson that Party is a rude and barbarous instrument of legislation, only less bad than that legislation by despotic power which it supplanted. We may faintly hope that the era is coming—is at hand—when party having done that great task, will itself be at an end.

Nor is that too bright a hope of the progress of civilization which anticipates the time when legislation will no longer depend on the relative strength of conflicting interests;—when the interests of the whole Commonwealth will be seen to be so inseparably connected that the injury of one is the injury to all—justice to one, justice to all.

It ought not to be omitted from our considerations, that almost all the arguments which are urged in favour of party, as a powerful instrument of good legislation, are of twofold application. They equally show party to be a powerful instrument of bad legislation. For all that they show is, that party is powerful—they do not and cannot show that its power is of that peculiar kind that it can be exerted only beneficially. What if party attaches politicians to “steady and lasting principles” if those principles be not founded in justice? What if there be questions “not calculated to catch popular favour, which, by the stout and strong working of a party, at length became law,” if that stout and strong working be for selfish and corrupt ends? If party create a powerful combination in favour of right, it, by the selfsame operation, creates a powerful combination in favour of wrong.

To the argument that the “change of councils,”—that is, the ejection of an unpopular party from office—may avert the danger of a revolution, it seems a

sufficient answer that the danger may be prevented from arising by eradicating the evil which is universally the origin of it—the government of a party.

It is not necessary here to contend for that entire separation of the administration and the legislature, which, as Lord John Russell truly observes, never has been nor can be thoroughly maintained.* The separate discharge of these two functions of government is all important, but it by no means requires that members of the Executive should be excluded from the Legislature. It is, doubtless, expedient that they should have the responsibility of initiating a considerable part of the business of Parliament. Their knowledge of the exigencies of the State in their practical details, render executive officers often the only persons qualified to suggest appropriate remedies. Moreover, in all questions of public policy, it is reasonable that the opinions of those who have experienced the difficulties of government should be heard with particular attention. Unless, indeed, the duty of originating laws devolve somewhere, it may happen, as Bentham has remarked,† that “there will be no plan, and that the assembly will remain in a state of inaction.”

Let us then examine more particularly the circumstances which are incident to the initiation of legisla-

* “History of the Constitution,” Chap. xiv.

† “Essay on Political Tactics,” Chap. vii.

tive measures—for it is obvious that, however great the benefits which might arise from the dissolution of parties, their attainment is impracticable if party government be a necessary motive power of the machinery of legislation.

Parliamentary measures may be broadly distinguished into two classes—*firstly*, those which relate specially to particular offices of the Executive; and *secondly*, those which have not that special relation. The former is probably the most numerous class, for the functions of the administrative offices are so extensive that nearly all parliamentary measures affect one or other of those offices: moreover, their functions are so distinct, that parliamentary measures, for the most part, affect one or other of those offices exclusively. It is very difficult to see why, in such cases, the responsibility of originating needed parliamentary measures should be transferred from the offices specially affected to the administrative body generally.

Take now the second class of measures, those which do *not* relate specially to particular executive offices. These are frequently proposed by authority of the collective “Cabinet;” but it is well worthy of consideration whether the task might not generally be assigned with great advantage to PARLIAMENTARY COMMITTEES. The machinery of these committees, as already explained, is admirably adapted to the purposes of political investigation. The evidence

which they collect, and their elaborate Reports thereon, usually constitute admirable bases of legislation.* It seems also desirable that the power at present afforded to individual members of Parliament, to submit proposals to the legislature, should be defended from further encroachments, and that Parliament should at least retain that share of legislative power which "Cabinet" government has left to it.

But parliamentary measures may be otherwise classified. There are those which ought to be resolved upon after public discussion, and those arising from exigencies which render prompt and secret action necessary. It must be admitted that there are political measures, with respect to which it is expedient to observe temporary secrecy, and for which the ultimate sanction of Parliament is requisite. Among such measures may be included certain international negotiations and provisions for the security of the State against internal disaffection or foreign hostility. But though the executive government must have due authority to deal with such cases on its responsibility in the first instance, and though such cases are often of such importance that it would be unsafe to leave

* It has been recently suggested, that the House of Commons might be relieved of part of the burden of its business by revival of its *Grand Committees*. Anciently, Grand Committees for Religion, for Grievances, for Courts of Justice, and for Trade, were annually appointed, but they were discontinued in 1832, having fallen into disuse.

the control of them to a single executive officer, it by no means follows that they require the concerted action of a political party. Wherever exigencies of State suddenly arise, which really require secret management, they are either such as obviously require a course of action about which there can be no dispute among competent statesmen, or else they are so entirely *sui generis*, that unanimity respecting them is not to be expected among "Cabinets," even as at present constituted. If, then, in such cases, diversity of opinion occur, as it undoubtedly does occur, in "Cabinets" now, and they yet are enabled to conduct public affairs effectively, why should a more comprehensive constitution of Executive Councils prevent their effective action?

It must be borne in mind that this question relates to temporary exigencies exclusively. In every prolonged course of political action, secrecy is now happily impossible, and Parliament possesses a controlling power. If it be correct to assume that Parliament ought to be supreme in all British Government, it follows that Parliament ought to regard with extreme jealousy any evasion of its authority by secret politics. There are, at intervals, it is freely confessed, political occasions which require secrecy; but those intervals are rare, and would be much rarer if it were sufficiently understood that the most inexpugnable diplomacy of honest people is candour. Political secrecy

is too often the occasion of intrigue, dissimulation, and dishonesty ; the cloak of official incompetence ; the dust which blinds the public eye ; the affectation which invests ordinary transactions, which require nothing but common sense and common assiduity, with an air of false mystery ; an unnecessary, mischievous, and delusive secrecy, which flatters the vanity of those who practise it, and imposes on those who are ignorant and superstitious in politics. There are others differently affected by it, whom it reminds that Greek oracles, Roman auguries, African fetishes, Brahminical rites, and the juggleries of all ages and nations have been protected from contempt by secrecy.

But, it may be asked, does not the submission of measures initially, to the approval of a "Cabinet," secure for them a greater amount of deliberation than they would otherwise receive ? The question may be answered by another : Is it wise to transfer the task of deliberation from Parliament, surrounded as it is by constitutional checks, to another assembly, which the law and constitution do not recognize ? In whatever proportion the responsibility of the legislature is assigned to a "Cabinet," in the same proportion is Parliament relieved from it. To divide responsibility is ever a sure way to weaken its obligations.

These, then, are the evils of party government. It diminishes responsibility by dividing it ; it subjects

the executive government to sudden and dangerous changes ; it confers office upon the wise and upright, together with the incompetent and corrupt, and, in turn, ejects them from power simultaneously ; degrades politics from a science to a warfare ; assigns public offices, not to the ablest men necessarily, but to those who have the greatest political power. These evils would no longer be inevitable, if the part of the executive government, called the ministry, were accessible to men of all political opinions simultaneously. In such case the greater part of the difficulties of distributing patronage, and of reducing the number and expenses of government offices would be at an end ; for a "minister" would no longer be under obligations to reward, by means of his patronage, the exertions of partizans to keep him in office.

Another great benefit which might be anticipated to arise from the fusion of political parties in the Executive Council would be, that the very conflict of opinion among its members would tend to deprive political measures of the taint of favouritism and of exclusiveness. Deliberation on a question of executive policy by statesmen representing opposite sides of the question would surely promote the attainment of a sound and just conclusion. We can also readily suppose that in a council composed of men of the highest political ability, who were relieved .

from the necessity of regarding party favour, many measures not calculated to win such favour, and yet of the greatest public value, would be suggested and discussed on their abstract merits. We can anticipate that such a council would sometimes precede and instruct, not always wait for, public opinion.

At present, alas ! party government reduces a considerable portion of the business of legislation to a contention resembling that of a subtle game played by ingenious moves. Two losses arise from this contention—an intellectual and a moral loss. An intellectual loss,—for the energy and intelligence which the parties might exert in improving the laws are wasted in attempts to overreach each other. A moral loss,—for the two parties are continually compelled to advocate measures of which they do not heartily approve. If one party decisively take up any position on an important question, the opposite party is almost compelled to take up the contrary position. Mutual concession would be fatal to the party interests, for the very existence of a party depends on, and is defined by, avowed opposition to its antagonists ; and so it comes to pass, with respect to great party questions, that the leaders must contend for years, perhaps, for positions which, if the voice of party were silenced, would be acknowledged to have no foundations in truth and justice.

Unanimity in the “ Cabinet ” is even now a mere

phantom ; it does not seem, therefore, necessary to formally answer the objection that such unanimity could not be insured in a council composed of statesmen hitherto politically opposed to each other, or, rather, deemed to be so. The concert of Cabinets consists, at present, not in unanimity of opinion (for it is impossible to conceive that all their members will arrive at identically the same solutions of all the complicated questions submitted to their consideration), but in *concerted action*, that is, a sacrifice, greater or less, of individual convictions to the necessity of presenting a strong front against their political opponents.

It has been said that the contention of parties makes "ministers" sedulous and energetic. But there is no need of that artificial stimulus. The scrutiny of Parliament, the criticism of the press, the observation of the nation, and the exigencies of his office, suffice, if anything can suffice, to animate the energies of a statesman. He is a trustee for the nation ; to the nation, therefore, he ought to be responsible. If he neglect his trust, let the national authority—not party intrigue—depose him.

If Parliament were to tacitly yield up the privilege which belongs to all its members of initiating laws, the government would become almost absolute ; for, as I have already shown, the great distinction between an arbitrary and a constitutional government is the

separation of legislative and executive functions. If the executive government ever obtained the sole power of initiating laws, it is obvious that the government would be almost a complete oligarchy. Indeed, purely party government differs little from oligarchy except in duration. It is not to be apprehended that in England "Cabinets" would propose the direct abrogation of the privilege of the independent members of Parliament to initiate laws; but it is well worth consideration, whether the tendency of modern politics be not to bring about the same result by gradual encroachments on that privilege,—whether Parliament, abnegating its own powers and delegating its duties, be not gradually conceding to the administrative body a monopoly of legislation — whether further sacrifices of the independence of Parliament would not tend to reduce it to a Court of Registration of "Cabinet" measures.

I have been earnest in showing what appear to me the evils of party, and the innovations of Cabinet government, because there seems to be a tendency to underrate the services of those who are termed independent members of Parliament. The destruction of the party system is in their hands, if, being an independent majority of the House of Commons, they persist in supporting, as far as they can conscientiously, whatever statesmen be in office, in refusing to join in any party vote contrived for the purpose

of evicting them ; in other words, never formally join themselves to the " Opposition " for the time being. What a monstrous delusion would that method of " opposition " appear if we were not used to it ! What a gross fraud on the nation that its chosen legislators should occupy the greater part of their time—not in consulting dispassionately for the public weal—but in contending against each other ! What would be the success of a commercial partnership or company which conducted its business on a similar method !

It appears to be an inevitable tendency of a representative government, like that of England, under a constitutional sovereignty, to emancipate itself gradually from the fetters of party. There are two forms of government under which that thralldom is almost unavoidable. In *republican governments*, where the chief magistrates are popularly elected at frequent intervals, emancipation from it seems impossible. Each new election reanimates the party spirit, and sets parties in most direct antagonism to each other. The person elected—nominally by the people, but really by the strongest party operating upon them—is compelled to return the support of his party by distributing among them profitable offices in the State. The contentions of parties become, therefore, in a great degree, contentions for these offices, and so cupidity combines with ambition

to animate the evil spirit of party, which is incomparably the most arbitrary of despots.

Again, under *absolute monarchies*, so soon as the people have obtained a small share in their own government, there must always be two directly opposed parties—the one contending for, the other against, constitutional liberty.

In England, neither of the two suggested causes of the perpetuation of parties exist; for, on the one hand, the chief magistrate is not popularly elected; and, on the other, the government is constitutional. If I be correct in assuming that no other necessity for the perpetuation of parties exist in England, it follows that there must be a way of escape from their enthrallment. Of that way it is natural to suppose the nation will avail itself, when increased political knowledge shall have manifested that party government is inconsistent with complete constitutional liberty.

The responsibility of each Executive officer individually to Parliament is an invaluable safeguard of the constitution; but the strict rules by which parties were formerly bound have been, and may be, still further relaxed with advantage. For the utility of party has depended on political causes, of which the influence is less and less, as that of political knowledge is greater and greater. There are those whose political knowledge is almost confined to the simple faith that this party or that is necessary for the salvation of the

country. These cannot see that the days of party are numbered, for they cannot understand the causes of the tranquillity with which the nation regards changes of "ministry." There are those who are consumed with anxiety lest when this party or that has relinquished office, none should be found to "carry on the government," as their phrase is. These cannot discern from the indifference of the nation to their *quid-nuncism*—from its contempt of the terrors which dupe them—that party dominion with its jealousies, its hypocrisies, its animosities, its treacheries, draws well-nigh to a close.

The doctrine of individual, instead of collective, responsibility of statesmen, has made great advance in modern times, and will probably continue to progress with the progress of national morality. It appears to be difficult to overrate the improvement of government which may be anticipated when party shall have become obsolete; when a seat in Parliament no longer has a commercial value, measured by the patronage it commands; when it may be possible to devise a system of selection for government appointments, such that merit, not ministerial favour, shall be the qualification of the candidates.

If it be objected that we cannot get eminent men to take office together, without party compact, the answer is simply—let us try. If party leaders will not work together, it seems to me that their services

can be dispensed with in favour of others less influenced by individual likings, and more by public zeal.

This at least is indisputable—that the Executive Council ought to stand or fall together in those cases only in which its unanimity is really necessary—that the dissolution of that body ought to be occasioned, not by the success of manœuvres of the party in opposition, but by the occurrence of a clear necessity for a *total* change of executive policy. Until proof to the contrary be given, we are at liberty to assume, from the foregoing considerations, that such cases are rare, and are becoming rarer continually. In all others, to require from a numerous Executive, and all those in Parliament who conscientiously respect them, one universal expression of opinion, is to demand—not the voice of a Council—but the cry of a Clan.

CHAPTER XIII.

THE PURPOSES OF PARLIAMENTARY REPRESENTATION.

IN small States, as the ancient Greek Republics and that of Rome, while its dominion was confined within narrow limits, it might be possible for the citizens to exercise legislative powers by aggregate votes, or *plebiscita*. But in a large State, this mode of exercising the popular suffrage is obviously impracticable; for in large assemblies, the intrusion of persons not qualified to vote in them is not easily detected, and free and deliberate debate, which is the very soul of legislation, is utterly precluded. "In so large a State as ours, therefore," Blackstone remarks,* "it is very wisely contrived that the people should do that by their representatives which it is impracticable to perform in person." The legislative authority of the House of Commons depends on principles of popular representation which are here to be considered.

* "Commentaries," Book I. Chap. ii.

In order to decide with accuracy and certainty on any question as to the proper constitution of a representative body, we must know to what end it is constituted. The controversies respecting the rights of suffrage and franchise, and the due exercise of those rights, seem almost interminable; so must be all controversies which are not based on some ground of belief common to those who debate them. The first step towards obtaining an agreement as to conclusions is to agree as to premises. Let us, then, consider first the purposes for which *every* system of parliamentary representation should be constituted—the objects to be required in every method of regulating the franchise. If the proposed method of inquiry appear too abstract, prolix, and methodical, let it be also considered that the most direct road is not always the most expeditious. The course of inquiry here proposed is to consider, first, the abstract objects and purposes of representation—and then, by reference to them, to discuss the principles which should regulate—1. The distribution of the franchise. 2. The qualification of the electors. 3. The method of election. I purpose also to state, briefly, the present nature of the constitution of Parliament under the several heads enumerated.

What is representation? Is a member of the House of Commons a *delegate* intrusted merely with *proxies* of the votes of his constituents, or a represent-

ative intrusted with discretionary powers? Is it his office to represent persons of a particular class, interest, or place only, or to consult for the nation at large? Is he an agent who personates particular persons, a counsel who advocates particular interests, or is it his duty to exercise judicial impartiality in the High Court of Parliament?

Sir William Blackstone decides in favour of the more extended view of the duties of a representative. "Every member," says he, "though chosen by one particular district, when elected and returned, serves for the whole realm: for the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the *common* wealth; to advise his Majesty (as appears from the writ of summons) *de communi consilio super negotiis quibusdam arduis et urgentibus regem statum et defensionem regni Angliæ et ecclesiæ Anglicanæ concernantibus*."*

It appears to me very important to establish the opinion, here expressed, respecting the duties of representatives, because, if it can be proved that a member of Parliament is not properly a delegate of particular persons or interests, we shall be able to see the nature of some, at least, of the principles on which the distribution of the franchise ought to depend. A member of the House of Commons must act either as

* Blackstone's "Commentaries," Book I. Chap. ii.

a representative, or a delegate, or partly in both capacities. This is, however, obvious, that he cannot always act in the character of delegate only, for he cannot consult his constituents as to the vote he is to give on every one of the numerous questions submitted to his consideration in Parliament. Indeed, if his office were merely to express the opinions of the majority of his constituents, it seems manifest that he ought to be deprived of any discretion in voting in Parliament, and to be bound, by law, to express those opinions, and no other. In that case the franchise would be no more than the collection of the suffrages of the people divided into districts for convenience of voting, as was the manner of giving expression to the popular voice, under the Athenian and Roman Republics. The Athenians voted by *φύλαι*, or tribes; and, under the Roman system, the vote of each of the centuries, and of each of the thirty-four tribes counted as one vote.

In such cases the machinery of a Parliament is obviously unnecessary, as all that is required to ascertain the popular decision is, that the Returning Officer accurately report the numbers of the majority and minority of the popular votes.

The very constitution of a Parliament, therefore, implies the exercise of certain discretionary powers by its members. But though this be admitted, it may be argued that the discretionary power extends only

to those cases in which the member cannot, by previous consultation with his constituents, ascertain their wishes. The only way in which he can fairly consult them is either at his election, or by a subsequent appeal to them, as general as that by which he was elected ; for if he were to appeal to a part only of the electors, he could not be considered to be delegated by the whole body.

Let us suppose that by pledges at their elections, or some other effective method, members are delegated to vote in a particular way on a particular question. One consequence which will follow is, that, as the members are deprived of all discretionary power, the debates of Parliament become unnecessary for directing their votes ; for the immediate purposes of those debates are to inform the judgment of Parliament, to make it acquainted with the exigencies of the community, to enable it to examine as to the importance and justice of their several requirements, and, by comparison and adjustment, to reconcile conflicting interests. All these purposes are, however, useless, if the members be bound, by law or by honour, to come prepared to vote in a particular way, irrespectively of the influence of discussion.

It is not likely to be strenuously argued that a system should be adopted which would destroy the influence of all parliamentary discussion upon the assembly to which it is addressed ; for it will be conceded that the

confidence reposed in the representatives for the maintenance of particular principles, can hardly be taken to be an absolute pledge to vote in a prescribed way under all circumstances ; a power must, at least, be reserved to a representative, to deal according to his own discretion with unanticipated contingencies, on which he has no opportunity of consulting his constituents. The existence of that discretionary power, at least, precludes him from being a delegate *solely*. It does not, however, follow hence, that there is no responsibility of a representative to observe the wishes of his constituents. They may very reasonably require, before electing him, to be informed, distinctly, of the nature of his general opinions on subjects likely to occupy the attention of Parliament, in order that they may ascertain how far those opinions conform with their own. But that he is, when elected, generally still at liberty to exercise his judgment, and even to change his opinions expressed at the hustings, if an honest and careful review of them lead him to the conviction that they were erroneous, appears to me actually demonstrable from the following considerations. Any *trust*, to be obligatory in conscience, must be defined by the selfsame persons who appoint the *trustee*, or person who is to fulfil the trust. His powers and his duties must be derived from identically the same authority, for it obviously would be contrary to morals, as it is to law, that a man should

be bound in conscience to exercise, in a particular way, powers delegated to him by several others, when they themselves, while delegating those powers, differ as to the mode in which they are to be exercised. For, which of the different ways is the trustee to choose? By whom, of those who appoint him, is he to be guided, in preference to the rest? At the most, he is bound to exercise his trust in a particular way in those particulars only, respecting which the trust-makers are agreed.

Let us now apply this abstract principle of equity to the relations between a representative and his constituents. Regard him as their trustee. With respect to the source of his *power* there is no ambiguity; it is derived from his constituents acting by their majority. But from whom does he derive the *duty* of expressing this or that opinion in Parliament? In what particulars are the trust-makers agreed? The very majority who voted for him are rarely, perhaps never, *all* agreed on any one point on which their opinions have been compared with his. Some of them differ from him on some points, some on others, but they all voted for him, from personal consideration, or because of their agreement with him on those points which they respectively deemed most important. In the minority, also, are probably some electors who assent to some, and dissent from others, of his opinions. The essential conditions of a valid trust to express

particular opinions in Parliament are, then, wanting. The persons nominating him to his office, do not concur as to the opinions he is to express. How, then, can a trust exist which it is impossible to define? The real trust imposed on the representative is coextensive with those obligations, which alone the trust-makers can generally concur in conferring on him,—namely, to exercise his representative power honestly and discreetly.

This argument, of course, assumes that the candidate has not defined his parliamentary obligations by unconditional pledges. Let us now see whether the proper purposes of representative government are promoted by the candidate becoming in this, or in any other way, a delegate. This question may be discussed with another which seems to involve the same principles.

The question whether a representative ought to be a delegate of a particular *constituency*, and the question whether he ought to be the chosen advocate of particular *classes* or *interests*, appear to depend on precisely the same principles. A member of Parliament is degraded into a delegate by advocacy of exclusive interests, whether these interests affect his constituents only or larger parts of the community; indeed, it is not easy to distinguish, constitutionally, between the systems of class representation and representation by delegates. The representatives of

interests are their delegates ; the delegates of places are the representatives of local interests. The coincidence of the results of the two systems is but one among many instances of the convergence of extreme political opinions,—extreme absolutism tending to demagogism, and extreme demagogism tending to absolutism.

Among the results of either system is the despotic power of the majority. If the representatives be bound to regard the interests of their constituents solely, it is clear that on no occasion can the claims of the minority, however just and fair, obtain the protection of the legislature: no member of the community can obtain any share of the benefits of legislation unless his interests happen to coincide with those of the party in the majority. Surely such a result is not consistent with moral justice. Amid all the complicated relations between members of a community, arising from the diversity of their occupations and interests, it is one great object of a wise legislature to reconcile and adjust differences, and to mete out justice indifferently to all. Class representation and delegate representation proscribe all reconciliation and adjustment of political differences. It is, indeed, a very general view of the proper constitution of the House of Commons, that it ought to be so chosen as to contain the special representatives of a large number of classes possessing exclusive in-

terests. Such views were set forth, at length, by Lord Liverpool, when a member of the House of Commons, in a debate of that House, (May 6, 1793). According to his opinion the landowners ought to be separately represented, the merchants and manufacturers ought to be separately represented, the army and navy ought to be separately represented, the practitioners of the law ought to be represented. In modern times, many other classes have been added, whose interests it has been contended ought to have special representatives, such as the railway interest, the shipping interest, the mining interest, literary interests, the interests of learned professions, &c. But one of the first difficulties which must occur in carrying out such a system of representation, and, indeed, of any system of representation by delegates is, that it never could be complete and impartial. For who shall decide how many and what interests shall have representatives? All cannot, since the number of different interests is greater than the number of members of the House of Commons. Again, supposing that difficulty surmounted, and a number of interests chosen as the proper subjects of representation, to the exclusion of the rest, in what proportions are the numbers of representatives to be allotted to each of the favoured classes?*

* Hitherto the law has attached the representation to *places* instead of *persons*; all constituencies have been defined by *local*

how are the conflicting systems of representation—the one by classes of interests, and the other by localities—to be reconciled? It is obvious that class interests are not always defined by local limits, and that if the system of class representation be right, the system of local franchise should be wholly abolished, not merely on account of the inconveniences of a double system of representation, but because the local franchise would interfere with the required adjustment of the relative numbers of representatives of each class.

The very enunciation of these difficulties seems sufficiently to manifest that a system of class representation is fatal to legislative justice. The only argument which appears to be producible, to give the system a show of fairness, is that, though if a single

qualifications, excepting the three Academical constituencies. It has, however, been proposed to extend this anomaly, by creating a constituency of the members of the Inns of Court. It is not enough to show, that a constituency so created will probably elect able representatives. Before the proposition be adopted, it ought to be shown that the innovation cannot be drawn into a precedent injurious to the Constitution. If the barristers have their separate representation, why not the solicitors? why not the members of the College of Surgeons? why not the members of the Royal Society? why not all professions? Such a proposition ought to be made on some distinct principle respecting the right number of "personal" franchises, and its proper ratio to that of "local" franchises; and that principle ought to be enunciated and proved to define necessary limits. It may be doubted whether such limits exist; whether the logical application of the principle involved in the proposition would not require the representation of an indefinite number of classes.

class only were represented, it would profit unfairly by legislative power, yet by the conjoint representation of several classes, that evil will be neutralized. It is to be feared, however, that experience has but too plainly demonstrated the insufficiency of this reasoning. It is but too certain that, even at the present day, representatives of several classes combine together in the House of Commons for mutual protection, and concur in delaying or defeating measures which deprive them of unjust privileges. Where contending parties have been nearly balanced in the House of Commons, a compact knot of class representatives, by holding the power of turning the scale, have been enabled to bid almost their own price for their influence.

It is obvious that a system such as this cannot be that which most effectually conduces to wise and just legislation. Such a system offers premiums to the strategy which extorts public funds for local or private benefits, and encourages the tenacious reserve which conceals abuses, and the insidious clamour which defends them.

In the Courts of Law the duties of advocating opposing interests, and of deciding respecting them, are assigned to different persons. These Courts, also, have certain powers of changing the laws, and we may conceive the possible existence of an entire system of legislation, conducted by a legislature,

similarly divided into two bodies—advocates and judges. But in Parliament there is no such separation of duties. A chief characteristic of parliamentary decisions is, that those who debate also decide. It will, I suppose, be admitted, that Parliament has functions of justice, that its duty in making laws is to adjudicate with the same regard to impartial equity, which is required of the law courts. It is difficult to know how far back the question is to be traced to first principles. Yet, surely, the proposition that legislation ought to be founded in justice, and not the right of the strongest, is an axiom, and need not be proved.

Assuming that, we must admit that the legislative power ought to be exercised with judicial impartiality. But it cannot be so if the legislators be all advocates of interests of particular persons or places; for, if they be advocates, it is obviously their duty to obtain all the benefit they possibly can for their respective clients; and another and independent set of persons, from whom they are entirely distinct, ought to have the sole power of settling conflicting claims.

Is there, then, no duty which the representative owes to his own constituents specially? There is this special obligation and no other—to state to Parliament the special wants and interests of his constituents, and by fair and discriminate discussion to

inform the judgment of the legislature—not by special advocacy to unjustly bias its decisions. Without an extensive distribution of the franchise, the most upright Parliament would be liable to commit injustice by overlooking local claims; but where every part of the country duly contributes its representatives, the interests of none are likely to be disregarded from ignorance of their existence.

The information of Parliament is not, however, the sole benefit arising from the diffused franchise. It is not enough that laws be just, they should be believed to be so. Those who consent to be subject to them, ought to have a reasonable ground of belief in their justice. Respect of the people for the laws is known by experience to be an essential element of their efficiency; and the general confidence of the people of England in their form of government, has often contributed to the successful working of new laws, of which the provisions have been incompletely framed. Moreover, if—as I have endeavoured to prove—the moral obligation of human laws is dependent solely on national compact, the nation ought, of right, to have general confidence in the justice of the laws.

But were the laws made by delegates only, no such general confidence could exist. As the results of legislation would depend solely on the relative numbers of delegates of different parts of the com-

munity, those numbers must be apportioned with mathematical exactness, or else legislative decisions would be incessantly regarded as produced by an unfair distribution of numerical strength of representation among the different constituencies. All confidence in the justice of the laws would then depend on the adjustment of the franchise with the utmost nicety; and this precise adjustment would be required to be made, not merely with regard to numbers of the people affected, but with reference also to all the fluctuating circumstances of the magnitudes of their several interests, and the degrees in which they were affected. The solution of questions so complicated would be more difficult than could be provided for by any constitutional system; whereas, such nicety of adjustment of the franchise is not a necessary preliminary to the confidence of the people in the Legislature, if the latter be so constituted as to comprise upright and wise legislators intrusted with discretionary powers. The method of parliamentary delegation has never been adopted in the laws of Great Britain; yet there is no class of the community capable of exercising deliberate judgment, whose opinions are not sooner or later regarded by the legislature. Even under a confessedly imperfect system of representation, the people rest satisfied with the moral influence of their opinions on the legislature, and the laws acquire far more respect from

the personal character of the representatives than could be anticipated from a system of delegation, however arithmetically precise. General obedience to and respect for the laws are among the noblest characteristics of the English people, and furnish one of the most cogent arguments in favour of their ancient method of representation.

CHAPTER XIV.

PARLIAMENTARY FRANCHISE.

THE principal distinction observed with respect to the distribution of the electoral franchise* in the United Kingdom is, that the franchise is given partly to counties at large, partly to places within them. The representatives of counties are designated knights of shires in England and Ireland, and commissioners of shires in Scotland, and their aggregate number is about five-thirteenths of the whole House of Commons. The remaining eight-thirteenths are chosen by the cities, boroughs, universities, and cinque ports. The Universities send members (of whom the number is six), who are styled "burgesses," and the representatives of the Cinque Ports† are "barons." By the Reform Acts of 1832, the number of members constituting the House of Commons was fixed at 658, of which number 500

* *Franchises*, in law, are various privileges originating in Royal grant. Electoral franchise, or the privilege of sending members to Parliament, is now entirely regulated by Acts of Parliament; but was originally exercised by those places only to which writs for the purpose were issued by the Royal prerogative.

† Some coast-towns of Kent and Sussex which obtained peculiar political and judicial privileges by ancient charter.

were assigned to England, 53 to Scotland, and 105 to Ireland. Some changes have, however, been occasioned by the disfranchisement of one or two boroughs.

The property qualification required by the Act 1 and 2 Vict., c. 48, of each knight of the shire is the possession of any property for his certain use to the amount of 600*l.* per annum, and for each citizen or burgess half that amount. But of members for the Universities, of Scottish members, and of eldest sons and heirs apparent of peers, lords of Parliament, and persons qualified to be knights of the shire, the property qualification is not required. Members must be of full age, and not incapacitated by mental imbecility. English and Scotch peers are ineligible, but Irish peers, unless elected to be representative peers of Ireland, may sit for any place in Great Britain. The judges (with the exception of the Master of the Rolls) are ineligible, so are clergymen of the Church of England, ministers of the Church of Scotland, and the Roman Catholic clergy, but dissenting ministers sit in the House of Commons.

Government contractors and bankrupts are disqualified from sitting in that assembly, as are also all pensioners under the Crown during pleasure, or for a term of years, and persons concerned in the management of duties or taxes created since 1692 (except Commissioners of the Treasury), and persons holding various new offices or places of profit under the Crown

created since 1705. But any member who accepts an office of profit under the Crown, existing *before* 1705, *vacates* his seat, but may be *re-elected*. Also Acts of Parliament, creating new administrative offices, often contain clauses, enabling the heads of those offices to sit in the House of Commons, so that they may there answer for the conduct of their departments.

The acceptance of offices, of which the appointment does not belong directly to the Crown or Lord-Lieutenant of Ireland, does not vacate seats in the House of Commons. Thus the acceptance of the offices of Secretaries to the Treasury, Under-Secretary of State, and Secretaries to the Admiralty or Board of Control, does not require vacation of seats in Parliament. Neither does the acceptance by officers of the army, navy, or marines, of commissions in those services. Returning Officers, whose duty it is to return to the Crown Office the names of candidates elected, cannot be candidates at elections of which they make returns.

As a member once duly elected cannot resign his seat directly, his course, if he wish to retire, is to apply to the Treasury for one of the inconsiderable offices of Steward or Bailiff of her Majesty's Chiltern Hundreds of Stoke, Desborough, or Bonenham, or the manors of East Hendred and Northstead. The application is usually granted, and the House of Commons must issue writs for the supply of vacancies created by acceptance of these offices.

A member while sitting for one place is incapacitated from being a candidate for another ; so is also a candidate claiming a seat by petition in case of a controverted election. Members duly returned for more places than one must elect for which they will sit. If a member returned to sit in Parliament for any place be found disqualified by bribery, he is disabled to serve in *that* Parliament for *that* place.

I shall now endeavour to explain more particularly the manner in which the franchises are distributed throughout the kingdom. The principal distinction, as has been mentioned, is between county members, who are severally elected by voters whose property comprises the large areas of *counties*, and borough members, who are severally elected by voters whose property is concentrated in *towns*. Of all voters (except those who return the six university members) certain property qualifications are required, which are different for county and borough voters, as will be more particularly explained in the next chapter.

SHIRES are large districts, into which the whole of Great Britain and Ireland has been divided for political purposes from a very remote period. Of the shires, the principal officers are the Lords-lieutenant, intrusted with the military array ; the Custodes rotulorum, or keepers of archives, who are usually the same persons as the Lords-lieutenant ; the Sheriffs or shire-reeves, who execute judgments of the courts, and

are principal conservators of the peace; the Under-sheriffs; the Coroners, who hold inquisitions of causes of sudden death and of some other matters, and were ordained, together with the sheriffs, to keep the peace of counties when the earls gave up the wardship;* and the Justices of the Peace, whose commission extends only to their own counties, and have jurisdiction of many offences, and control of the county funds. The functions of these offices will be considered when we come to treat of Local Executive Government.

The shires are the same as the counties, with the exception of a few counties of towns and cities, which are also called counties corporate. A county of a town or city is a municipal district, which, by ancient privilege, has the peculiar right of choosing its own sheriffs and other county officers. The areas of the shires vary considerably; the number of square miles in the least county, Rutland, being 150, and in the largest, Yorkshire, very nearly 6,000. The number of county members is greater in the large than in the small counties, but not in like proportion. In Rutland, there is one county member to each 75 square miles; in Yorkshire, one county member to each 998 square miles; also the latter county is nearly twice as densely populated as the former.

The cities are those towns which give their names

* "Mirror," Chap. i. § 3.

to episcopal dioceses, with the addition of Westminster, which is a city, but not now the seat of a bishop.*

Boroughs or towns sending members to Parliament formerly received the elective franchise by Royal grant, but that franchise is now regulated by Acts of Parliament. By the Reform Acts of 1832 many inconsiderable places were deprived of the power of returning members to Parliament, and the power was granted to large, populous, and wealthy towns. The towns wholly disfranchised, and those in which the franchise was reduced to one member for each, are enumerated in schedules appended to the Acts, and it is understood that in framing the Reform Act for England the rule was adopted of extinguishing the franchise of towns having less than 2,000 inhabitants each, and of reducing the franchise to the return of one member in larger towns having less than 4,000 inhabitants in each.† By the same Act, the franchise of returning two members was given to certain towns and metropolitan districts having populations of 25,000 and upwards, and of returning one member to towns having populations of 12,000 and upwards. In other schedules of that Act were lists of places which were to have a share in the election of burgesses for places already possessing the franchise. Provisions were also made for determining new boundaries of

* Coke states that Westminster is a city as it had formerly a bishop. 1 Inst.

† Roebuck's "*History of the Whig Ministry*," Vol. II. Chap. I.

boroughs, which in many cases had extended, in progress of time, far beyond the ancient boundaries.

By a subsequent Act of the same year, the division of counties and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament, were settled and described; in some cases to boroughs of small size, adjoining parishes were annexed for the purpose of electing members of Parliament.

In the House of Commons, as it is at present constituted, there is no uniformity in the proportions of the number of members to the size, wealth, or population of the places which they represent. On the contrary, great inequalities in these proportions exist, and the distribution of franchise throughout the country is essentially unsystematic. Indeed, the great irregularity of the civil divisions of the country renders a uniform system of franchise, based on those divisions, impracticable. The existing anomalies, however, are excessively great, and their existence is to be, in a great measure, accounted for by the political difficulty of remedying, more completely than was done by the Reform Acts of 1832, the utter confusion into which the franchise had then fallen.

In an elaborate account of the results of the English Reform Act, it is stated by a recent writer* that,

* "*Westminster Review*," Jan. 1852.

"The character of that Act is that of a gigantic patchwork. It added and destroyed without any perceptible rule: with no allowance for the wear and tear of time, it started in a manner full of apparent caprice." And instances of the extreme difference which exists between the ratios of the population to the number of electors in different places, are then cited. Of two places, returning each two borough members, the smaller place had 73 electors to each member, and the larger 12,500 electors to each member. And it is asked, "With what propriety can two men be said to be equally represented, when one has as much as a fiftieth share in the appointment of a legislator, and that of another is not more than one ten-thousandth?" It is not, however, quite accurate to say, that the Reform Act added and destroyed without any perceptible rule. It added by one rule and destroyed by another; and the existence of two rules appears to have been a political necessity.

It is a matter of no small difficulty to determine a satisfactory system of distributing the franchise. Some, following the method of the United States, would make the distribution such that the number of members in each district should be in a uniform ratio to the population. To properly decide on the justice and expediency of that, or any other system of distribution, we must determine the purposes of repre-

sentation on general principles, and then see how far the proposed system conforms to those principles. Of the first part of this task I have endeavoured to accomplish, in the preceding chapter, so much as seemed requisite for the purposes of this inquiry, and shall now endeavour to deduce from the principles there proposed, some very general rules respecting the right distribution of the franchise. These rules relate to—

1. The local distribution of the franchise.
2. The numbers of electors in the constituencies.
3. The areas of the represented districts.

1. *The local distribution of the franchise.*—The principles already laid down lead immediately to the conclusion that constituencies ought to be defined by local limits. The only other way of defining constituencies which has ever been proposed, or, indeed, is likely to be proposed, is that of distribution according to professions or interests. If members of Parliament were required to be advocates of particular interests, it might be necessary that the numbers of advocates should be accurately proportioned to the magnitude of those interests. The results of legislation, in such case, being determined not by force of argument, but by the relative number of delegates of the several classes, to render the attainment of just decisions even probable, the number of delegates should be apportioned with reference

both to the numbers of persons in the different classes and the magnitude of their interests. The only chance of avoiding predominance of unimportant classes would depend on the number of their votes being proportioned to their importance. Even if such an adjustment could be obtained, it appears quite certain, from the foregoing considerations, that there would be no adequate security that the legislation would be founded on justice. If, then, the constituencies ought not to be divided according to professions or interests, the only method remaining to be considered as admissible, is that of local divisions.

2. *The numbers of electors in the constituencies.*—There seem to be sufficient reasons for concluding that the numbers of representatives of any portion of the country should be made to depend (partly, at least) on the number of qualified electors which it contains. This conclusion may be arrived at without any assumption whatever as to the proper qualification of electors. Merely supposing that they are properly qualified, we must allow that that testimony of a large number of them in favour of a parliamentary candidate, which their votes express, affords probable evidence of his fitness. The collection of a sufficient number of electors in voting is necessary to eliminate the effects of individual antipathies, partialities, and purely personal considerations. If

we admit this, it follows that where, by reason, either of the superior wealth, populousness, morality, or education of a particular district, properly qualified electors are closely congregated, there is an abundance, so to speak, of the *electoral material*, out of which constituencies ought to be manufactured.

The reason, then, for making the distribution of the franchise dependent on the distribution of wealth and population is not to obtain an accurate conformity between the magnitudes of interests, and the numbers of representatives, but rather to make the most *economical* use of the total amount of that evidence of the fitness of the representatives, which is afforded by concurrence of many opinions. But, in the distribution of the franchise, the election of discreet and impartial representatives, though the principal is not the sole object to be considered. It is not enough, as has been said, that the laws be just ; the people ought to be made responsible for them by being made participators in legislation, as far as is possible consistently with other conditions of a sound system of representation. Of this participation, a necessary result is, that the people become responsible for the laws, and interested in upholding them. But it is obvious that the moral effect of such participation is, in a great degree, impaired, where enormous disparities of electoral power exist in different constituencies.

In arranging, then, the number of representatives, enormous disparities ought not to exist in the ratios of the electors to the elected. And this condition is consistent with one of the most obvious provisions for securing fit representatives; viz., that the constituencies should always be sufficiently numerous to be exempted, as far as possible, from partial or corrupt influences. It will be generally admitted that there is a limit below which, if the number of persons in each constituency be reduced, their suffrages will be probably obtained either by purchase or coercion. An argument has, indeed, been urged in favour of the existence of small constituencies, which is not altogether destitute of weight. Lord John Russell, in his work already cited, adduces this argument, as follows: "Enlightened men of all classes should be capable of being elected It is not to be denied that a body of 10,000 farmers or tradesmen will choose no man who is not known to them, either by his station in the country, or by a course of popular harangues. If, then, you make elections by none but large bodies, you either shut out the aristocracy of talent from your assembly, and constitute them into a body hostile to your institutions, or else you oblige them to become demagogues by profession; things both of them very pernicious and very dangerous to the State."*

* "Essay on the History of the English Government," Ch. xxxi.

Some of the most eminent members of the House of Commons have, by the fickleness which seems inevitable in large bodies, been ejected, after years of faithful service, from the representation of large constituencies, and found no way into the House of Commons but by the franchise of small boroughs. It is needless to cite instances of that which is a matter of notoriety. It would be an easy task to reckon up a large number of celebrated parliamentary leaders during the last half century, the objects for a time of the most lavish popular favour, who, by a sudden reverse of the tide of popularity, have been ejected by their constituents. Now, by nomination boroughs, that is, boroughs so small that a single proprietor can dictate the result of an election, such leaders may find access to Parliament if they happen to possess the favour of such a proprietor. But this method of obtaining a representation by men of talent is necessarily very partial, for the representative of a nomination borough is returned not solely from an abstract respect for his talents, but also because he serves the interests of a particular party. Moreover, there is an untruthfulness in the process of returning him, which is quite indefensible. If it be proved expedient for the commonwealth that certain men be returned to Parliament, who are not likely to secure the approval of large constituencies, let their return be otherwise provided for. But let the way be undisguised. In a

nomination borough the voters are merely superfluous. They serve no other purpose than that of concealment of the real electors. If we allow that justice is endangered by association with falsehood, it follows that, for the sake of justice, the real power should be avowed, and the fictitious method of election abolished. If it be just that certain proprietors should have the *power* of returning members to Parliament, it is equally just that they should have the *responsibility* of doing so.

If small constituencies could be so constituted, that the electors composing them should be exclusively men, whose intelligence made them superior to popular caprice, and whose power made them superior to oligarchical control, such constituencies would be, doubtless, useful parts of the representative system. But it is obvious that such peculiar qualifications of the electors are not likely to be secured by any method of distributing the franchise locally. It seems, therefore, certain, that there is a limit below which, if a constituency be reduced, there can be no general confidence that it has a real value as a part of the elective system. On the other hand, a considerable diversity in the size of the constituencies is doubtless attended with occasional advantages. The portion of the representative body, chosen by very populous places, usually includes the most fluent speakers, and the most liberal promisers of legislative changes ; but

some useful members are not fluent speakers, nor liberal promisers of legislative changes.

It would be unjust, however, to conclude that the magnitude of constituencies necessarily operates to the exclusion of either eminent parliamentary leaders, or the class of representatives whose value consists in quiet conscientious industry. The injustice committed by one large constituency in rejecting an eminent statesman, is very generally repaired by another ; and even among large bodies, some will always be found to appreciate unostentatious merit. On the whole, the balance of argument seems decidedly against excessive diminution of the extent of constituencies. The corruptibility of very small boroughs is a paramount argument against their enfranchisement, for the simple reason that truth and honesty are obligations paramount to all considerations of expediency.

In the Reform Acts of 1832, a remedy was designed for the undue diminution of constituencies ; a great defect, however, of those Acts, appears to have been that they enunciated no general rule, but dealt only with particular cases. The disfranchisement of particular places by *schedules* alone is a grand defect in an Act regulating the representation. For it is of the very essence of sound legislation that it proceed by general rules. Adjudication upon special cases is an executive, not a legislative function, and the separation of the two functions has been shown to be the

fundamental principle of constitutional government. If Parliament must settle such schedules from time to time, not merely does its work require perpetual revision, but the disfranchisement of each place is made the subject of contest by the parties whose political interests, and the persons whose private interests, are locally affected, and an impartial decision is absolutely precluded. Whereas, if a general rule be enacted that a place, of which the number of electors falls below a certain ratio to the total number of electors of the kingdom, shall *ipso facto* be disfranchised, the different parties being simultaneously affected by the rule, are much more likely to fix the standard equitably.

The same reason appears to exist in favour of a rule, that whenever a constituency reaches a certain standard, it shall be *ipso facto* enfranchised. For if large bodies of electors be debarred from those privileges of the franchise, which are extended to smaller bodies, the preference of the latter will tend to create in the former a feeling either of disaffection or imperfect sympathy respecting legislation in which they do not adequately participate.

3. *The areas of the represented districts.*—It is obvious that the representation should extend to the whole country. Though the franchise should be distributed conformably to the distribution of the electors, and therefore, in some measure, to the wealth

and population of the constituencies, it would be inexpedient that the enfranchisement should proceed in a strictly uniform ratio to either ; for if such proportion were adopted, places in which property and population are greatly concentrated would exercise an unfair domination. Of the metropolitan districts, for instance, the population is almost exactly one-twelfth of the population of the British Isles. Therefore, if the members were returned to Parliament in a uniform ratio to the population, the Metropolis would return at least 54 of the 658 members, or three times as many members as at present. Such a concentration of political power in the Metropolis might reasonably excite the jealousy of the rest of the community, and apprehension, lest metropolitan interest should be unduly preferred to provincial interests.

The second and third of the above-mentioned principles of the franchise require for their fulfilment conditions, which, owing to the distribution of the population, partially conflict. On the one hand, the franchise ought to be so distributed, that no part of the empire should be without a representative, in order that Parliament may be informed of the wants of every part of the community. On the other hand, the whole population ought to have sufficient share in the franchise, in order to feel a confidence in the legislature, and to be itself responsible for the laws enacted. The one condition requires *distribution*,

the other (owing to the populousness of the towns) *concentration* of the franchise. Both conditions are partly fulfilled by the present double system of representation, by which the county members represent the diffused or rural population, and the borough members the concentrated or urban population. It can hardly be said that the rural population of this country has a fair share of legislative power, for while the county members of England are not half as many as the borough members, the urban population represented by borough members is much less than half the population represented by county members. When it is considered that the property qualification required of county voters is much higher than that required of borough voters, and that the former are more numerous than the latter by one-half their number, it seems difficult to account on any principle of justice for the enormous disparity which exists between their respective electoral powers. In the parliamentary boroughs of England and Wales, on the average, one member represents somewhat more than twelve hundred electors, and twenty-one thousand persons; but in the counties one member represents, on the average, about three times as many electors (whose property qualifications are higher than those of borough voters), and more than three times as many persons. In Ireland the disparity is still greater, the portion of the population represented by each county

member being, on the average, between four and five times the number represented by each borough member.

A more equable adjustment of the numbers of electors to the numbers of representatives in the towns and counties respectively seems to be justly required ; and the question of such an alteration ought to be discussed, like all other constitutional questions, with strict impartiality, and without reference to the consequent gain or loss to political parties. But though it has been admitted that the double system of representation of the concentrated and the diffused population separately has some advantages, it is a question worthy of the gravest consideration, whether those advantages might not be better attained by a simpler method ; whether the twofold franchise be not imperfect and needlessly complex ; whether the fusion of the urban and rural population in voting would not secure, more completely, the true purposes of representation, solve innumerable difficulties which now perplex the question of parliamentary franchise, and be an effectual means of removing a feeling of antagonism between the towns and counties, which is injurious to the real interests of both.

CHAPTER XV.

PARLIAMENTARY SUFFRAGE.

THE principles of representation, already proposed, serve to determine, in a great measure, not only the conditions to be observed in the distribution of the Franchise, but also the right of Suffrage and proper Qualification of the voters. We have now to consider the manner in which the Suffrage is acquired in this country, and the constitutional principles which affect the possession of that important right.

The qualifications of voters for all members of the House of Commons, except six representatives of Universities, consist in interests in houses and lands. These qualifications differ, therefore, from those of the members themselves, whose qualifications consist in the possession of personal, as well as real property.

One of the principal objects of the Reform Acts of 1832, was to secure uniformity in the rules respecting qualifications of voters. Previously to those Acts, great diversity existed in the nature of the claims to

exercise the suffrage in different places, and the laws respecting it were in a state of extreme complexity and confusion. By the Reform Acts, great changes were made in the laws relating to the rights of borough voters: in order to introduce regularity and uniformity in their qualifications, inhabitancy was made a principal requirement.

The *city* and *borough* voters are, by the Reform Act for England, required to be (1) males of full age, owners or tenants in the place for which they vote, of buildings separately (or together with land, occupied therewith under the same landlord) of a clear yearly value not less than 10*l*. The voters must be previously registered, and to be registered in any year, must have *occupied* the premises for *twelve* months previous to July 31st, in that year; must, where there are poor rates, be *rated* to them all during such occupation; must have *paid* the *poor rates* and *assessed taxes* due thereon before January 5th,* by July 20th; must have *resided six months*, before July 31st, in the place for which such persons vote, or *seven miles* thereof. The premises need not be always the *same*, but may be different premises occupied by the voter in *immediate* succession during the twelve months previous to July 31st. In such cases the voter must have paid, by July 20th, all the poor rates and assessed taxes due January 5th,* in respect of all the premises

* By 11 & 12 Vict., c. 90.

so occupied in succession. Where several persons *jointly occupy* premises, each such person may vote when the clear yearly value of the premises, divided by the number of joint occupiers, gives a sum not less than 10*l*. If overseers neglect, or refuse, to rate a person after a tender of rates by him, he shall be deemed to have been rated.

2. Besides the above class of voters, whose qualifications are frequently designated that of "ten-pound householders," persons may vote for cities and boroughs, who are entitled as burgesses or freemen thereof, or in the city of London, as freemen and liverymen, if duly registered.

3. Persons who had, *before* the Act, rights to vote for any city or borough, in virtue of other qualifications, retain (if duly registered) their right, so long as they continue qualified as electors, according to the custom of their borough, or any existing law, unless their names be omitted from the register for two successive years, for some other cause than receipt of parochial relief, or absence on naval or military service.

The voters as burgesses or freemen, to be registered in any year, must be qualified on July 31st in that year; must have *resided* six months previously in the place for which they vote, or *seven miles* of the polling-place. Persons admitted "burgesses," or "freemen," after March 1st, 1831, must have been admitted in respect of *birth* or *servitude*, in order to be entitled to

vote. Also, persons admitted in respect of *birth*, must claim, through some person entitled, before March 1st, 1831, or who afterwards is entitled by servitude.

No person can be registered as a city or borough voter, in any year, who received parochial relief or alms within twelve months previous to July 31st, in that year. The register is conclusive evidence of the voter retaining his qualification, except where he has parted with it since the registration. Household voters must have a continued residence up to the time of polling.

County voters are qualified by being—

1. Those who have any *freehold* estate of *inheritance*, of the clear yearly value of forty shillings.

2. *Lessees*, or assignees of leases of lands and tenements of a clear yearly value, above rent and charges, of, at least, 10*l.* and 50*l.*, of which respectively the original terms were *sixty* and *twenty* years at least, (whether determinable on lives or not).

3. Actual *occupiers*, to whom *subleases* of such terms unexpired, have been made or assigned.

4. Annual *tenants* of lands and tenements at an annual *rent* not less than 50*l.*, and joint tenants, from year to year, of lands, of which the aggregate rent is equivalent to at least 50*l.* for each tenant.

5. Those who have any tenure of lands or tenements for *life* or *lives* or larger estate of the clear yearly value of ten pounds.

6. Those who have *freeholds* of the clear yearly value of forty shillings for *life* or *lives* in actual occupation of such freeholders at the time of registration and voting ; or acquired by marriage, marriage settlement, devise, or promotion to an office or benefice.

The requisite occupations may be of several lands held in immediate succession. Individual rights of suffrage existing before the Act are preserved to their possessors.

No public tax, nor church, county, or parochial rate, is deemed a charge payable out of lands and tenements, nor need they be assessed to the land-tax Trustees and mortgagees, to have a right to vote, must be in actual possession of the rents ; so, also, of mortgagors, and those for whom property is held in trust.

Those *copyholds*, *leaseholds*, and *tenancies*, which give rights to vote for cities or boroughs, do *not* qualify *any one* for county suffrage. The *occupier* of a freehold, thereby entitled to vote for a city or borough, may *not* vote for a county in respect of such qualification.

Of freehold or copyhold estates, six months' possession, and of leasehold estates or tenancies, twelve months' possession, previously to July 31st, in the year of registration, are required, except the estates come by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice or office.

REGISTRATION is essential to the exercise of the suffrage in counties, cities, and boroughs. County electors, not previously registered, must send in their claims on or before July 20th; but those who are registered need not renew the claim, unless they change their qualification or abode. Voters omitted in the registers of cities and boroughs, and qualified to vote on July 31st, may send in their claims on or before August 25th. Lists of *freemen* entitled to vote, are made by the town clerks, to whom notices must be sent. Omissions, either by the overseers or town clerks, may be supplied on application to the revising barristers.

The revising barristers, who are appointed to revise the lists of voters, and to adjudicate on claims to vote, hold their courts every year, between September 15th and October 31st. The barrister notifies his appointment to the clerks of the peace, or town clerks, and the clerks transmit to him abstracts of the lists of claimants and objections to claims, that he may fix the times and places of holding his courts. They are held at the polling, or some other appointed place; are open courts, not attended by counsel, but by attorneys and agents. Overseers are required to furnish the barrister with all information in their power, to enable him to revise the lists; and collectors and officers having custody of

tax-assessments and vote-books, must produce them if required.

Any person on the list of voters may *object* to claimants in any county, city, or borough, after notice delivered to the overseer, and the person objected to, on or before August 25th. If the latter do not prove his qualification in the revision court, his name is expunged. Appeal from the barrister's decision on points of law to the Court of Common Pleas, may be made on notice given before the rising of the barrister's court. The barrister may give costs, not exceeding 20s., in cases of frivolous claims or objections. Personation of voters is punishable by imprisonment and hard labour.

In the Reform Act for Scotland, the rights of suffrage are preserved to individuals actually possessing them before March 1st, 1831, but are not thereby perpetuated. The county electors qualified under that Act are :—

1. *Owners* to the value of 10*l.* a-year.
2. *Leaseholders* for at least fifty-nine years, or life, and *leaseholders* for at least nineteen years, whose clear yearly interests are worth not less than 10*l.* and 50*l.* respectively.
3. *Yearly tenants*, at an annual rent not less than 50*l.*
4. All tenants, who have paid for their interest in their holdings, not less than 300*l.*

As in the English Reform Act, six months' proprietorship is required of the freeholder, and twelve months' occupation of the mere occupier, and with like exceptions in cases of ownership or lease acquired by inheritance, marriage, mortuary disposition, or appointment to a place or office. In *boroughs* the exclusive suffrage of town councils has been abolished, and the 10*l.* qualification by ownership or occupation substituted, with restrictions like to those of the English Reform Act as to length of occupation, payment of taxes, registration, and exemption from parish relief.

In Ireland, in addition to the preservation of the rights of individual voters, existing at the time of passing the Reform Act, county suffrages are given, by that Act to —

1. *Freeholders* and *copyholders* of lands and tenements, of the value of at least 10*l.* a-year.

2. Original *lessees* or *assignees of leases* of lands and tenements, of a clear yearly value of at least 10*l.* and 20*l.* respectively, for terms of sixty and fourteen years at least.

3. Actual *occupiers* to whom *subleases* of such terms (unexpired) have been made or assigned.

4. Immediate *lessees*, or assignees of leases, who have yearly interest of 10*l.* in a lease at 20*l.* per annum, and actually *occupying*.

Provision is made against the county franchise

being exercised in respect of property, which would give a title to vote for a city or borough.

In the Irish boroughs, titles existing and inchoate at the time of passing the Act, were reserved to the individuals possessing them, and the suffrage was given to occupiers and owners of lands and tenements to the amount of 10*l.* a-year, on conditions of registration, *six* months' previous occupation and payment of all rates due for more than half-a-year.

In the Universities of Cambridge, Oxford, and Dublin, the suffrage does not depend on a property qualification. In Cambridge, the members of the senate have the suffrage, and consist of those masters of arts whose names continue on the boards of their colleges during a prescribed period. In Oxford, the qualification is nearly the same. In the University of Dublin, the voters are the Fellows, Scholars, and Graduates, whose names are kept on the boards of the college.

Let us now proceed to notice the constitutional effect of legal qualifications of voters. It will be conceded that some qualification of electors is necessary; for even those who contend for what is termed *universal suffrage* do not intend the word "universal" to be construed literally, for they would exclude minors, women, and other members of the community, from the lists of electors, on the score.

of personal unfitness to exercise the suffrage, or disability to exercise it properly.

"In a free State," says Blackstone, "every man who is supposed a free agent, ought to be, in some measure, his own governor, and, therefore, a branch, at least, of the legislature, should reside in the whole body of the people." This I believe to be the true foundation of popular government. No man *can* (as I have endeavoured to show) unconditionally give up to another, or others, all power of governing him. Of course, if he be deprived *entirely* of the power of governing himself, he ceases to be a free agent, and his moral responsibility to the laws ceases also. It is this connection between freedom and responsibility which constitutes the abstract right of suffrage. But the right of freedom is not universal—it is contingent on a proper exercise of freedom. A criminal is deprived of freedom for the protection of society—a lunatic is debarred from it for his own protection also. So far from men being all born free, all are born incapable of freedom, which is gradually accorded to them as their capacity for exercising it increases with their advance to years of discretion. On precisely the same grounds the right of suffrage must be contingent on its due exercise, may be refused to those who would exercise it improperly, and taken from those who have exercised it corruptly. If we regard a civil government, as pro-

perly based on a voluntary compact among individuals, to be bound by laws which they concur in authorising for their mutual benefit, it is clear that they have a right to exclude from participation in the making the laws, persons who would obviously use that power to the injury of society. The question, then, as to what constitutes the right of suffrage is reduced to this—what constitutes fitness or personal competency* of a voter? That question being answered, another follows—what are proper tests of that fitness or competency?

If we regard the exercise of the suffrage as the discharge of a solemn social duty,—if we reflect that on the votes of the constituencies depends the right choice of the legislators, and, consequently, the welfare of the myriads of this empire—if we admit, therefore, that the suffrages, which affect for good or evil the condition of a large part of the human race, ought to be given, not lightly, nor intemperately, nor corruptly, but deliberately, soberly, and honestly, that an election is no proper occasion for frivolous pastimes, noisy ribaldry, saturnalian orgies, faction

* A distinction is to be made between the fitness and personal competency of voters. Minors and women often possess political knowledge amply sufficient to render them competent voters, but are deemed unfit to exercise the suffrage, partly because they are usually under guardians who would prevent them from exercising their own discretion in voting; partly because those guardians of their social interests represent them for legal and political purposes.

fighths, or markets wherein men's rights and liberties are bought and sold—that on an elector is therefore imposed a high TRUST, which he is morally and religiously bound to observe, and which he cannot violate without breaking the commandment—*thou shalt love thy neighbour as thyself*—we must further admit that the electors ought to be such only as respect highly social obligations.

If, again, we consider that a legislator, properly chosen, will possess assiduity, discreetness, incorruptible integrity, and a right understanding of political principles—if we admit that, for the choice of such a legislator, sound discrimination and knowledge are required on the part of the electors, and judgment, which will not be seduced by specious eloquence, nor beguiled by vain promises, nor overcome by the effrontery which moves a saucy tongue,—and if we concede, further, that such discrimination, knowledge, and judgment, are not acquired without teaching—we must allow also that education is a necessary qualification of an elector.

But in a large population, numbers will be found who are almost destitute of good education and regard to social obligations. It is but too certain that the standard of morals and education is, with respect to a considerable part of the population of this country, as low as in any part of the civilised world. Of the juvenile population, indeed, there is reasonable ground

of confidence that the education here rapidly progresses, and will ultimately attain to a degree not inferior to that attained in the most educated nations of Europe. With regard, however, to the adult population, this is by no means the case. The most powerful public instruments for the diffusion of knowledge are of but very recent institution ; so that the older part of the community has been, in a great measure, unaffected by them. Moreover, those instruments, though of extensive, are of by no means universal operation, and even where education has been imparted its effects are not indelible. The teaching of the school is too often effaced by the teaching of the squalid home and its consequences—the gin-shop and the pawn-shop. Watch the gathering of miserable beings about those altars of human sacrifice—pass through the crowded haunts of the poor in our great cities by night, and see how tempting is the glare of the licensed stores of poisoned beverage—observe how the wretched victims are caught in the shining trap, so cunningly set to destroy them body and soul ; mark how they linger about the bright bait, how powerless the poor moths are to shun the flame, —and say whether there be not classes incapable of the rights of free men.

Or follow them to their homes. Homes ? Nay, let not that word be profaned. Human sties rather—where light and air, God's universal gifts, are denied

to men—where the high walls of the narrow alley imprison reeking vapours laden with pestilence, and a seething of moral and physical corruption—where the soil is sodden with the refuse of a sluggish pool of filthiness unnameable, and the walls dank and blackened by slime and smoke, and mildew—where the air is thick and murky—where in dismal dens men and women herd promiscuously (yet in their bodies dwell immortal souls), in shameful contact from which the beasts of the field would shrink loathingly—where rites are performed so abhorrent to humanity that the pen may not write of them—where the speech of man is blasphemous and obscene—where the child is waned from its birth, nor breathes the pure air of heaven, nor feels the gladsome sunshine, nor sees the fair green earth, nor hears the hymns of birds, nor is watched over with human smiles and prayers; which all are its birthright—where the boy is nurtured in sin only, so that his hand is against every man, and every man's hand is against him—where the young man has no knowledge of God's name but as a byword, no thought of virtue but as a fiction of the priest—where the father regards his children with an evil eye because they add to the burden of his life—where there is no old age honoured, loved, obeyed, befriended, and the bodies of those who die prematurely old are indecently huddled into shallow holes, scraped out amid the broken bones and putrid flesh crammed

into the neighbouring charnel—where sin and woe envelop men from the cradle to the grave like a pall—where the dunnest smoke of hell hovers upon the earth—where there is blackness of darkness which no eye pierces save God's only.

Such places exist in all our great cities, and contain thousands and tens of thousands of the people. While members of Parliament have been debating with cunning fence of words their party questions, this social abortion has been growing, neither heeding nor heeded of Parliaments. At last the human fungus has covered so much of the land that even the expert politician begins to notice it, begins to discern the necessity of a new kind of politics which his party has never before espoused in or out of office. It may be that a remedy will be found for the evil before it become overwhelming, but of this we may be sure, that the poor sufferers by it are little able to devise a solution of the political problem, which is immeasurably the most important and difficult of which the times demand a solution.

It seems certain, then, that a considerable part of the population is destitute of the means of exercising the suffrage properly. It may, indeed, be laid down as an incontrovertible proposition, that every man who is a free subject to the laws has a moral right to participate in the government by which they are enacted. For what are laws but restrictions of natural liberty of

individuals, for the welfare of the community which they compose? And to what do laws of human institution owe their moral obligation, but to that universal and perpetual social compact by which men agree to give up part of their personal liberty for the sake of some common benefit? But men may by mental or moral incapacity be unable to participate in a valid manner in that, as in any other, compact. Such men are amenable to moral and human laws, simply because they are enacted by powers superior to their own, and it would obviously be injustice both to themselves and to the rest of the community to impose on them any power in regulating institutions which they neither respect nor comprehend. There can be no grounds either of expediency or of right in assigning an office to those who cannot exercise any discretion, and therefore cannot be subject to any responsibility, in discharging it; for in constitutional government this rule is of universal application to all, from the sovereign to the peasant, that constitutional power shall exist only where there is responsibility for its proper exercise.

We must, therefore, conclude that on the state of national education and morality depends at all times the proper limit to the extent of the suffrage; and this principle coincides with that already arrived at in the preceding chapter, that the representation should extend to all the responsible members of the community.

There remains to be considered the more difficult question—what is a proper test of this responsibility? It is obviously impossible to establish an examination of the education and moral qualifications of all who claim the suffrage; and even if such an examination could be instituted, its result would be (as has been well remarked of all examinations) an *ἐπιδείξις*, or show of qualifications, not a certain test of their reality.

As the property qualification* at present exists, it excludes a large number of persons who ought to possess, and includes many who ought not to possess, the suffrage. A considerable part of the community, whose intelligence, industry, and integrity entitle them to be electors, follow occupations which do not lead them to acquire the kinds of property which confer votes. There is also a large part of the community inferior in intelligence, industry, and integrity, whose occupations lead them to acquire those kinds of property. No one who has fairly and carefully observed the conduct of elections, especially in towns, can have

* Possession of property is a test, though necessarily an imperfect one, of moral and mental capacity—of moral capacity, because the accumulation of property usually requires perseverance, frugality, and industry; of mental capacity, because the acquisition of property usually requires prudence and knowledge, and affords facilities, and induces a desire for education.

Mr. Bentham, with a vehemence and verboseness not common in philosophical works, advocated a system of universal suffrage in which (rather than infringe on its universality) he would include *insane* persons; whose votes, he argued, would not be likely to produce dangerous results, as they would probably be nearly balanced!

failed to notice that there are electors who not only are ignorant of the merest rudiments of politics, but are absolutely incapable of being influenced by any legitimate motives in voting, and whose votes are therefore gained by cajolery, coercion, or corruption.

The proper remedy seems to consist not in destroying the property qualification, but in so re-arranging it, that it may become better fitted for including all those who are worthy, and excluding all those who are unworthy, of the suffrage. The question is, however, so beset with difficulties that, for its final solution, further impartial observation and experience, gradually extended, are requisite. Propositions have been made to give the suffrage to certain persons, whose professions are guarantees of education ; but in examining such propositions, it should be remembered that great caution is necessary to avoid class representation which, as has been shown, is inconsistent with just principles of representative government.

The law does not allow any man, however great his property, to give more than one vote to one candidate. Let us consider whether this law be based on correct principles ; a solution of that question will aid the solution of others, the most difficult, relating to the suffrage. If members of Parliament were delegates of particular interests, and not independent representatives, it would certainly appear most conformable

with justice that, not only should the number of members be proportional to the several magnitudes of the interests represented, but that the individuals of each interested class should possess electoral powers *proportional to the amounts of their individual interests*. But as has been shown in a preceding chapter, it is impossible that a system of legislation by class delegates could be carried out completely, and even if it could, it ought not to be. It is not unfrequently said that *property ought to be represented*; but I apprehend that there is a confusion, both of thought and expression in the phrase. It cannot be meant to be understood literally, for a member of Parliament is a representative of persons, not things. Neither can it be intended that representation should regard the rights of property *only*, for the legislature must deal with other rights also—as those of personal safety and reputation. Neither can it be intended that *all* property should be represented; for a very considerable part of the total wealth of the community is in the hands of persons utterly incapable of exercising the franchise properly. Neither can it be intended that a man's right to legislative justice depends on the possession of property, for that right depends on a moral law superior to all temporal considerations, and justice respects not the persons of the poor or the rich. Neither can it be maintained that a man's interest in choosing wise and

upright legislators is proportioned to his private wealth.

The desire of each individual of the community for its welfare depends on two classes of inducements—*public* and *private*. Let us consider them separately:—*First*, as to the *private* interest of each person in the government. We have to consider that this interest, so far as it is an honest one, consists in an anxiety to maintain the *just* rights of each individual. But surely this inducement does not increase in proportion to wealth. If a man be permanently resident in a country, and have a *just* share of its wealth, and live in conformity with the laws, the private interest which he stakes in the enactment of just laws is simply his *all*—his life, liberty, and subsistence. Indeed, if any one have a greater stake in the country than another, it is the poor man, for he is the severest sufferer by political disasters, the greatest gainer by just laws. So far, then, as men can honestly have private stakes in the welfare of the country, they are, at least, as important to the poor as to the rich. But it may be argued that though their stakes be thus important to the poor, they may not always *perceive* this truth, which, therefore, does not always furnish cogent motives to respect the existing laws. This may be conceded; for it cannot be denied that those who prosper under an existing code of laws are generally better satisfied with them than those who do not so prosper. The

latter, therefore, will be more ready for changes of government than the former. But this consideration is of itself no answer to the question before us—who ought to have the suffrage? For in order to infer that the unprosperous ought not to have it, we must assert not only that they are generally the class most dissatisfied with the government; but further, that their possession of the suffrage would increase that dissatisfaction. The tendency to this dissatisfaction which arises from the distribution of all classes into rich and poor is inevitable; but the real question is—does the general distribution of the suffrage aggravate that tendency? Both reason and experience show the direct contrary. First, reason shows that men are less likely to be disaffected to a government in which they have a share, than to one which is simply set over them. Secondly, it is a result of experience that rebellions and seditions have been usually set on foot by ambitious nobles or unrepresented populace, and not by citizens possessing suffrages.

If it be said that the poor, coveting the wealth of the rich, have one motive to favour political schemes by which this wealth may be distributed; this, also, is conceded. But if it be inferred that, therefore, the poor ought not to have votes, the answer is ready. To the argument that the poor ought not to vote because they may covet the wealth of the rich, it may

be answered with as much (or rather as little) reason, that the rich ought not to vote because they may covet the wealth of the poor. The often-dreaded evil has never yet been experienced—that a whole people should rise up and make a general confiscation of property; but there is another evil which has been experienced,—namely, that a nation should groan under rich taskmasters.

Thus far we have considered how private interests in the welfare of the country furnish inducements to exercise the suffrage properly. Next, let us consider *public* interests in the same way. The desire for the welfare of the community which proceeds on public grounds, is certainly influenced, in some degree, by wealth. For extreme destitution is usually accompanied by the ignorance which prevents a man from taking an enlarged view of the necessities of his fellows, and thereby acquiring a comprehensive regard for their welfare. But this argument avails little in support of the principle of the representation of wealth, for, excepting the class continually subject to extreme necessity, public philanthropy is to be found in equal degrees in all ranks of a Christian country.

It is by no means easy to discuss a proposition which is supported only by assertion, and this appears to be the sole basis hitherto of the proposition—that “Property ought to be represented.” At least, I am not aware of any attempt to defend it by systematic

argument. The only other ground of defence of it which occurs to me is the following. The better men are educated, the more likely are they to exercise the suffrage discreetly; and the higher their political education, the more value might be reasonably attached to their suffrages.

So far as these considerations lead to the inference that property is a probable *test of fitness* for the suffrage generally, they have been already allowed; but the question now is, whether a wealthy elector ought to have a plurality of votes, and if not, why not? In numerous private associations individuals have such a plurality of votes, dependent on their amounts of investment in the common stock. In such cases the principle of "Representation of Property" is consistently carried out. To settle the question, whether the same principle should exist in constitutional government, is, in fact, to determine the fundamental rights of suffrage. The determination of the nature of those rights essentially depends on the consideration, whether members of Parliament be Representatives or Delegates.

Assuming them to have the former character, we may concede that, if a political qualification could be devised, attainable only by a class of persons of pre-eminent political knowledge and integrity, there would be some argument for giving them superior political powers. But the mere possession of wealth is not

such qualification. Political knowledge depends on other causes also, among which are personal taste and intelligence. So variously do these causes operate on different classes of the community, that the chance of superior wealth being accompanied by superior political knowledge is a balance of conflicting probabilities; that balance is certainly not so strong as to furnish a sufficient argument for a law giving a plurality of votes to the wealthy elector,—for the probability is obviously much stronger, that such a law would tend to a system of delegation instead of representation.

Precisely in the same way it is to be inferred that no elector ought to belong to two constituencies at once. If the possession of property constituted the *right* of the elector as well as the test of his *qualification*, the possession of sufficient property in two places should give him a right to vote in both. But if, as the case is, the right of voting is strictly *personal*, there seems no sufficient reason why electors of a town should have control in the election of a county, or *vice versa*. On the contrary, it appears that so long as votes are thus intermingled, a proper distribution of the franchise throughout the community is impossible. And for this reason I cannot help thinking that the creation of plural suffrages by societies, which artificially constitute qualifications by subdivisions of property, is opposed to the principles of the constitution.

Lastly, if the principles of the constitution require that each elector have but one vote, *à fortiori* they require that no elector should have the power of directing the votes of others ; for that power introduces all the evils of the plurality of votes, and the additional evil that the power is exercised irresponsibly. It cannot be denied that, if representatives be bound to regard, not merely the interests of their constituents, but of the whole community, the constituents are bound in their choice of representatives to regard, not their own interests solely, but those of the community. The suffrage has, therefore, the obligation of a trust—a trust especially for those whose social condition renders them unfit or incompetent to participate in the suffrage. Consequently the influence of voters by corruption or intimidation, instigates a defiance of moral obligations, and, as such, is a heinous violation of divine as well as human laws.

CHAPTER XVI.

PARLIAMENTARY ELECTIONS.

THE last branch of our inquiry respecting Parliamentary representation is the consideration of the method by which the election of members of the House of Commons is conducted, and of the constitutional principles involved in that method.

The local authorities appointed to superintend parliamentary elections are designated Returning Officers. They exercise their powers, on the occurrence of vacancies in the representation, by virtue of a *writ* issued for a shire election, or of a *precept* issued for a borough election. There is this important distinction between the manner of issuing such writs or precepts, that when a new Parliament is to be summoned, the summons proceeds from the Crown ; when occasional vacancies occur during the sitting* of a Parliament, they are filled up by the order of the House of Commons. By the power thus vested in that body,

* When such vacancies occur by death or elevation to the peerage during a recess, the Speaker issues his warrant to the Clerk of the Crown to make out a new writ.

it has the means of suspending the franchise of places in which bribery and corruption have been found to prevail.

The Royal authority to convene a new Parliament, is signified by the written command of the Queen in Council, addressed to the Lord Chancellor, who thereupon sends his warrant to the Clerk of the Crown, his chief ministerial officer, who is also attendant on both Houses of Parliament, and is required to prepare and issue the *writs* to the Sheriffs of counties, who in turn issue *precepts* to the other returning officers of places within their jurisdiction. The writs for Ireland are issued by the Clerk of the Crown in Ireland.

The returning officers for counties are the Sheriffs; for incorporated boroughs the Mayors or other chief municipal officers; for unincorporated boroughs, persons resident therein, nominated from year to year by the sheriffs of the counties in which these boroughs are severally situated; and if any of them become incorporated by Royal charter giving powers to elect a mayor or other chief municipal officer, such person becomes the returning officer.

Anciently, the freeholders elected their representatives at one of the ordinary shire-motes, or county courts held monthly, and the burgesses their representatives at their borough courts; but in the twenty-fifth year of the reign of George III., it was enacted that the sheriff should call a *special county court* for

the purpose of the election. The sheriff is required, by the writ addressed to him under the Great Seal, to cause the election of the county members and those of each place within the county which has the elective franchise. The precept which, in virtue of the writ, the sheriff addresses to each returning officer within his jurisdiction, is to be *returned* to him within a limited time, together with the name or names of the person or persons chosen. The sheriff, in like manner, returns to the Clerk of the Crown the writ, and the names of all the persons chosen in the county.

By the Act 7 and 8 Wm. III., c. 25, the sheriff holds a County Court for the election of knights of the shire, and "in case the said election be not determined *upon the view*, with the consent of the freeholders then present," proceeds to take a poll.

On the day appointed for the nomination of candidates for the representation of any place, a public assembly is held, before which addresses are delivered by electors, who propose and second the nomination of each candidate, and by the candidates themselves, who usually refer to questions of public policy of immediate interest, and state their own views respecting them. The candidates are then expected to answer questions, publicly addressed to them, respecting the course which they propose pursuing if they be elected. The voting is then, if there be a contest, taken by a show of hands, of which the result is

declared by the returning officer. If there be no more candidates than vacancies in the representation, or if the candidates, who appear in the minority on the show of hands, do not demand a poll, the election is at once declared "upon the view;" but if a poll be demanded, the returning officer defers until it is concluded, declaring the names of the persons elected.

Formerly, soldiers were required, during a parliamentary election, to remove two miles from the place of polling. They now are required to remain in their barracks. The exceptions to the rule for withdrawal of troops were soldiers in garrison, or who were entitled to vote at the election, and guards in Westminster, Southwark, or any place of Royal residence. The Clerk of the Crown gives notice of the issue of writs to the Secretary at War, under the acts prescribing the removal of troops during elections.

In each county several polling-places are appointed for contiguous parishes; and each city or borough has, according to its size, one or more appointed polling-places. Voters residing out of the polling district wherein the property is situated, which qualifies them to be voters, may, by claim before the revising barrister, vote in another district. On petition from the Justices in Quarter Session, additional polling-places may be appointed, but the number must not exceed

15 in each county, and one booth must be provided by the sheriff for each 450 electors. In the boroughs not more than 300, or, on requisition of a candidate, his proposer, or seconder, 100 voters poll at one booth. The votes are given openly at the booths and recorded in poll-books.

The laws against the exercise of bribery and intimidation, to influence parliamentary electors in giving their votes, are numerous, but in a considerable degree ineffectual. By the Treating Act, 7 & 8 Wm. III., c. 4, a candidate for a vacant representation of any place, who gives, or promises money, or entertainment, to his electors, for the purpose of procuring his election, is liable to be incapacitated to serve for that place. A later statute imposed a penalty on both the giver and receiver of a bribe; and by the 49 Geo. III., c. 118, any person giving or causing to be given, directly or indirectly, or promising money, gift, or reward to any person on engagement, that he shall, by himself, or another, procure, or endeavour to procure, the return of any person to serve in a Parliament, shall, if not returned, for every such gift or promise, forfeit 1000*l.*, and if returned, knowing and consenting to such gift or promise, be disabled to sit in that Parliament for that place. Any person receiving such money, gift, or reward, or promise on such engagement, shall forfeit such money, gift, or reward, over and above 500*l.*, which may be re-

covered by any person suing for the same in the inferior Courts of Record. Penalties are imposed on persons giving, procuring, or promising any *office, place, or employment*, on an express contract to procure a seat in the House of Commons. The penalty on the person returned is loss of his seat; on the receiver of the office, forfeiture of it, incapacity, and the payment of 500*l.* If the person who gives, procures, or promises the place be an officer of the Crown, a penalty of 1000*l.* is imposed on him.

By the Act 5 & 6 Vict., c. 102, it is declared, that the payment or gift of any sum of money, or other valuable consideration whatever, to any voter, before, during, or after an election, or to any person on his behalf, or to any person related to him, on account of such voter having voted or refrained from voting, or being about to vote or refrain from voting, at such election is *bribery*. To prevent *treating*, it is enacted, that any candidate or person elected for the representation of any place, who shall himself, or by another, or in any manner, directly or indirectly, give, or provide, or cause, or knowingly allow to be given, or provided wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, drink, entertainment, or provision, to or for any person, at any time, either before, during, or after such election, for the purpose of corruptly influencing such person, or another, to give, or refrain

from giving his vote in any such election, or for the purpose of corruptly rewarding such person or another, for having given, or refrained from giving, his vote at such election, shall be incapable of being elected, or sitting for that place, during the Parliament, for which the election is holden.

By 7 & 8 Geo. IV., c. 37, persons employed by candidates as counsel, attorney, poll-clerk, or flag-man, within six months before or fourteen days after an election, are disqualified from voting. A candidate giving a cockade or ribbon to a voter is subject to a penalty of 10*l.*, but the clause is inefficacious, as the penalty cannot be recovered with costs.

By resolution of the House of Commons each session it is a high infringement of the liberties and privileges of the Commons for Lords of Parliament or Lords Lieutenant of counties to interfere in the election of the Commons.

By an Act of 1852, for inquiry respecting corrupt practices at elections, it is provided, that upon address of both Houses of Parliament, stating that a committee has reported to the House of Commons that corrupt practices have extensively prevailed at any election, the Queen may appoint commissioners to inquire respecting them. These commissioners are to be barristers in England and Ireland, and advocates in Scotland, of not less than seven years' standing. The commissioners shall, by all such lawful

means as to them appear best, with a view to the discovery of the truth, inquire into the manner in which the election has been conducted. They have extensive powers of examining witnesses and documents, and may indemnify witnesses who make faithful discovery. The Report of the Commissioners is to be laid before Parliament.

The returns of persons elected representatives are sent by the sheriffs to the Clerk of the Crown, who retains the custody of all returns to Parliament, notifies them in the "London Gazette," registers them in the books of his office, and certifies them to the House of Commons. He has, also, custody of the poll-books of elections, is required to register them, to give office copies or inspection of them to applicants, and to prove them before election committees which he attends. When, in consequence of the decision of an election committee, a return is to be amended, the Clerk of the Crown attends at the table of the House of Commons to amend it.

The constitution and proceedings of committees on controverted elections, is now chiefly regulated by the Act 7 & 8 Vict., c. 103. The general nature of parliamentary committees has been spoken of in a former Chapter; but several peculiarities of the offices, powers, and appointment of election committees, require here brief notice. By a warrant of the

Speaker of the House of Commons, six of its members are appointed at the commencement of each Session to be a *General Committee of Elections*. This committee nominate, in their discretion, six, eight, ten, or twelve members, whom they shall think duly qualified to serve as chairmen of election committees; the members so nominated form the *Chairmen's panel*. The members of the general committee, all members above sixty years of age, and the principal "ministers" during their tenure of office, are excused from serving on election committees. The other members are divided into five panels, and members are chosen from these panels, in an order of succession determined by lot, to serve on election committees.

An election petition must be signed by some person claiming to vote at the election, or to have had a right to be returned, or alleging himself to have been a candidate at the election. Election petitions complain of either an undue election—a return made before or after the legal time—or not in accordance with the requisition of the writ, or of special matters contained in the writ.

The election petitions are referred by the House to the General Committee of Elections, who give notice of the days on which each election committee will be appointed, and the panel from which it will be taken. Four persons are chosen by the general committee on

each such day, from such panel, who are not disqualified by either the reasons above mentioned, nor by reason of having a private interest respecting the election. At the same time, the chairmen's panel choose from among themselves a chairman for the election committee. The names of the committee are communicated to the petitioners and sitting members, who may object to any of its members on grounds of disqualification. If the chairman or any other member be so proved to be disqualified, another is chosen in his place.

The five members finally chosen are sworn at the table of the House of Commons "well and truly to try the matter of the petitions referred to them, and a true judgment to give, according to the evidence." It is the practice of the General Committee of Elections to choose two of the four members of each election committee from each side of the House.

The election committees have power to send for persons, papers, and records, to examine the petitioners and other witnesses on oath, and are the only committees of the House of Commons who have the latter power. Formerly, interested witnesses could not be examined, but considerable alteration in this respect has been effected by the Law of Evidence, 14 and 15 Vict., c. 99, which provides, that on any inquiry arising on any proceeding in any court of justice, or before any person having, by law, or consent of the

parties, authority to hear, receive, and examine evidence, the parties to the proceeding, and the persons on whose behalf it may be brought or defended, shall be competent to give evidence.

Persons complaining of, or defending, a return, are required to deliver to the clerk of the General Committee of Elections, lists of votes intended to be objected to, with the several heads of the objections, and the election committee cannot entertain any other.

The committee decides "whether the petitioners, or the sitting members, or either of them, be duly returned or elected, or whether the election be void, or whether a new writ ought to issue." Their decision on these points is carried into execution by the House of Commons.

The existing provisions of law against bribery and intimidation of electors may be at once assumed to be inadequate. This inadequacy arises from several causes. In the first place, the adjudication on questions of bribery and corruption is given to a tribunal peculiarly unfitted to act with judicial scrutiny and impartiality. If love of privileges had not an almost irresistible influence over human nature, the House of Commons would be utterly without excuse for the tenacity with which it maintains a power which it, of all bodies, ought to be the very last to covet. All means of preventing corruption

of electors must be imperfect, so long as the tribunals which investigate it are chosen from the persons elected; and not from an independent body. True it is that great precautions are used to avoid choosing, on an election committee, members of the House of Commons personally interested in the result of its inquiry. But so long as bribery and corruption occur—as unhappily and indisputably they do—in almost every part of the country, the members of that House will exercise very tenderly the powers intrusted to them. They may be—they are generally—men of integrity; but they are subject to human infirmities, and with however firm purpose they set out in their inquiry, it is too often shaken by a reflection that, if the sentence against corruption were strictly pronounced in every case, a large proportion of the elections would be invalidated. They know too well the manner in which elections are conducted to forget that such a sentence would frequently endanger their own seats.

Another sore evil with regard to investigations of bribery is the manner in which those investigations are originated—by petition. The petitions are, for the most part, arranged by parliamentary agents—persons employed by candidates to promote their return to Parliament. The parliamentary agents for candidates of opposite politics, by mutual concession, withdraw petitions, which they pair off against each

other. It may, therefore, be submitted, further, that not only ought the investigations respecting undue returns to be conducted by tribunals independent of members of Parliament, but also to be originated by an independent authority.

A third great evil attending the inquiries of election committees is, that they involve so large an expense that private persons ought not to be required to defray it. There is here, therefore, a continual obstacle to the institution of inquiries which justice demands. Such expenses ought, if possible, to be reduced; and where the inquiries are of public concern, the expenses of them ought to be publicly borne.

But however carefully the machinery of such investigations be contrived, it cannot fully answer the purpose of preventing the return of members to Parliament by undue means. It might be possible, indeed, to constitute a system of judicature sufficient for the investigation of cases of actual bribery; but the corrupt influence of intimidation may be exercised so covertly as to escape legal proof. It may be perfectly well known to an elector that, unless he vote in a particular manner, he will be removed from his tenancy, or lose the patronage of his customers,—and yet that knowledge may reach him by paths so circuitous, that a tribunal cannot follow them. The intimidator can always find means of eluding judicial investigation.

It has been suggested that votes at parliamentary elections should be taken, not orally, as at present, but by voting papers, in accordance with the practice of election of local Boards of Health, and under the Poor Laws. It is argued, that this method would remove the evils of violent interruption at the polling-booths, the most frequent pretexts for treating and payment of travelling expenses, and the inducements to hold back votes, in order to enhance their price. These arguments are, no doubt, deserving of consideration ; but if the voting paper be filled up privately, an opportunity is given for dictation of the manner of filling it up, which could not be easily obviated by legislative provisions.

The question of voting by secret ballot is so much a matter of controversy, that this is not the proper place for offering a decisive opinion respecting it. But some considerations may be stated which may serve to assist the reader in forming his own conclusions on this question. In the first place, it may be safely assumed that the merely mechanical means of insuring immediate secrecy may be made effectual. This is already done in the election of vestries by ballot, as explained hereafter ; and in a nation so fertile as ours in mechanical expedients, it would be absurd to deny that numerous contrivances could be adopted, which would effectually secure a record of each vote in such a manner, that none but the voter

could discover for whom he gave it. But that such a contrivance would not, of itself, suffice to prevent bribery we have the evidence of experience.

The election of the magistrates of ancient Rome, under the system of ballot, was continually influenced by bribery. Of this every one is aware who is acquainted with the numerous references to the offence, *ambitus*, in Latin authors. The bribery and treating which prevailed at Roman elections by ballot are evidenced by the many severe laws against those offences enacted at different epochs of that republic, and the numerous proceedings to enforce those laws. Among them are those entitled Calpurnia, Cæcilia, Fabia, Licinia, Tullia. The latter, proposed by Cicero, imposed a penalty of exile for ten years. The Lex Licinia contained minute provisions for choosing the judges of questions of bribery, by a method not unlike the English "challenge of juries" by the accuser and accused. The provisions of the law were directed principally against bribery of agents. From Cicero's oration for Plancius, in a trial under this law, it would appear that, in order to facilitate bribery, agents were appointed by candidates to look after particular sets of voters, and that a well-organized system existed of dividing the electors into classes for the purpose of securing votes. The method seems to have been to put money into the hands of an agent for each class, and the payment was probably contingent on the

result of the election, so that the voters received nothing if the candidate were not elected. This method seems to have been successful for the purposes of bribery under the ballot at Rome, and it would be difficult to show that it could not be practised in England. It does not show a correct knowledge of human nature to assert that corrupt bargains will not be made, when there is no security for their fulfilment but the mutual fidelity of the bargainers. On the contrary, by a strange perversity of human nature, the false honour which binds men to the observance of immoral and illegal compacts is often far more potent than moral obligations.

But though it cannot be shown that bribery would be *wholly* prevented by the ballot, it would probably increase the difficulties in the path of the trafficker in votes, and would not add to the number of corruptible electors. Against intimidation the ballot would be more effectual than against bribery, for the simple reason, that the former method of coercing voters is, as has been remarked, so covert, that the law is and must be unable to reach it. The question of the expediency of the ballot is thus reduced to this—would the amount of the diminution of corruption effected by it be less or more than an equivalent for the disadvantages of its introduction? Let us, then, endeavour to ascertain what is the real nature of those disadvantages.

There are three principal arguments against the ballot which deserve attention. One of them is, that the elector has no *right* to a concealed vote, because he exercises a trust for the non-electors, and therefore ought to be subject to the influence of their opinions. To this argument it may be replied, *firstly*, that though, as has been already observed, the trust in question exists, the elector, by open voting, is far more likely to be influenced by his superiors in wealth than by his inferiors—the non-electors—in voting: *secondly*, that where his vote is controlled by non-electors, he is subject to a popular terrorism, which is as great an evil as bribery: *lastly*, that the idea of *accountability* of the elector to the non-electors depends on a wrong notion of representative government; for the *right* to vote, as has been shown, is strictly personal, and as the power of voting ought to be given to every one who can exercise it honestly and discreetly, that power, so far as it is held in trust, ought to be held in trust for those only whose disqualification for voting would disqualify them also for controlling the votes of others.

The second argument alluded to involves moral considerations. It is said that the ballot would offer continual temptations to the electors to make false statements respecting their votes. This may be admitted. But it seems also certain that the number of persons whom the ballot induced to speak thus

falsely, could not exceed the number of those who vote against their consciences now. If a person, by his means or integrity, be rendered inaccessible to bribery and intimidation under a system of open voting, he would remain so under another system, and therefore to him, at least, the ballot would offer no inducement to speak falsely. On the contrary, the number of persons who committed the sin of falsely stating their votes, would be, probably, less than the number of those who now vote corruptly; for it is probable, that many electors, now corrupted, would not be asked as to the disposition of their votes when no certain answer could be obtained.

If we set this aside, however, and assume the persons who vote corruptly now, and those who would speak untruly as to their votes under the ballot, to be equal in number, the moral question is reduced to this: which is the greater offence—to vote against conscience—or to make a false statement respecting the vote? To me the former appears the greater offence. It is as much a lie as the latter; for is it not a lie to vote in favour of a candidate, and so declare that you prefer him from political considerations, when, in truth, you entertain no such preference? Both offences are alike offences against truth, but the former has the additional heinousness, that it injures society.

The third principal argument against the ballot is,

that it would tend to diminish the influence of public opinion. The question here raised is one of no little difficulty. Suppose, in order to clear the question of extraneous considerations, this case to be put—what would be the effect of introducing that ballot in an electoral system, supposing that bribery and corruption *did not exist at all*? Of course this assumption is against fact, but it will enable us to avoid confounding the benefits of the ballot, as an obstacle to corruption, with its influences on public opinion.

It will, probably, be almost universally admitted, that in the case supposed, the ballot not being wanted to prevent bribery, ought not to be introduced. Why not? There would then be no necessity for secrecy of voting; but would there be any disadvantages in it? This disadvantage—that the sense of duty which ought to be attached to the exercise of the suffrage would be weakened by secrecy. Men are usually so constituted that the observation of their fellows keeps alive a sense of duty. Supposing always the election to be perfectly free and uncorrupt, we can yet easily conceive that individual electors would take more pains to select fit representatives, and exercise greater vigilance and caution in voting, if subject to ridicule and discredit for making a careless, foolish, and improper choice, than if they were unaffected by public opinion. The effect of it, then, is not only to add to

the value of the votes, but, as a consequence, to their moral weight.

Again, some advantage arises from the publicity of the votes of men of superior information, as a means of instructing a less informed class of electors. If I be ignorant of the merits of a candidate, can it be said that I may not legitimately inform my judgment by inquiring, how electors, in whom I have confidence, voted, when he was candidate in another place, or on a former occasion?

If the above analysis of the principal arguments for and against the ballot be correct, the question of its expediency is almost reduced to a comparison of the amount of benefit, which it would produce by diminishing corruption and intimidation on the one hand—and on the other the disadvantages which may be anticipated (1) from bribery, assuming new forms, and (2) from secrecy of voting, impairing the influence of public opinion. It would be impossible to compare with precision by *à priori* reasoning, these consequences of a measure involving so many complicated considerations. There is a large class of prophetic politicians who readily eke out insufficient arguments by positive predictions in cases, where the careful investigation of the political principles thus summarily discussed, would suggest difficulties so many, and doubts so serious, as reasonably might deter from indulgence in confident speculation.

This remark appears especially pertinent to the subject before us. The moral and political influences of the ballot, upon attentive consideration, appear to depend on many considerations of such extreme difficulty, that positive general conclusions from them must, of necessity, be of the nature of unproved assumptions. The conclusion is therefore suggested, doubtingly, that the ballot would add considerably to the difficulty of bribing successfully, and would be yet more effective as an obstacle to the influence of elections by intimidation ; but that so great a change of the electoral system may be very prudently preceded, at least, by a fair trial of the effects of improvements in laws affecting the distribution of the franchise, the qualification of electors, the judicature of controverted elections, and the restraint of the tumult, licentiousness, and excess, by which the conduct of elections is now frequently disgraced.

CHAPTER XVII.

THE NATURE AND AUTHORITY OF PUBLIC OPINION.

PUBLIC opinion is so generally recognised as a power of British Government, and so continually appealed to as an authority in matters of political controversy, that an inquiry respecting the principles of the Constitution would be necessarily incomplete without a consideration of the nature of public opinion, the influence which it has, and the influence which it ought to have, in government. The questions before us here, are, then—What is public opinion? Is its authority in politics irresistible, or in what respects limited? Ought it to be deemed infallible and supreme in government, or under what restrictions are criteria of truth afforded by public opinion and to what extent do justice and policy require that government should be directed by its dictates?

Public opinion and its influences are not susceptible of very exact definition. We know exactly what the opinion of Parliament is, for it is ascertained by a simple numbering of votes. But public opinion

is seldom to be ascertained by such an exact method. It is generally understood to be an apparent consentience, on any public question, of a large majority of those whose interests are involved in it. The influence of that opinion on the legislature depends on the estimate which its several members form of the accuracy of the opinion, or the prudence of deferring to the wishes of those who express it.

There is a sentence of Erasmus which well expresses the distinction between that kind of public opinion which is intelligent and deliberate, and that which is unreflecting and sudden. He says of Sir Thomas More, in an epistle to Hutten, "*Nemo minus ducitur vulgi judicio ; sed rursus nemo minus ab est sensu communi,*"—or, as we may fairly render the words, "No one is less swayed by the *voice of the multitude* ; but, on the other hand, no one differs less from the *consentience of mankind.*" The consentience, or "common sense," conformity to which is here regarded with approbation, has, I think, a wider signification than that attributed to the phrase by Sir William Hamilton,* in the following passage :—

"Speaking, therefore, generally, to argue from common sense is simply to show that the denial of a given proposition would involve the denial of some original datum of consciousness."

* "Dissertation on the Philosophy of Common Sense," appended to his edition of Reid's Works, 1849.

Common sense, in its far more usual acceptation, implies not merely assent to necessary inferences from axioms, but an exercise of *judgment*—the faculty which weighs probabilities. It would be no praise of Sir Thomas More to say that he did not dissent from the logical consequences of original data of consciousness; but it is a very great merit of a philosophical mind, that it can withstand the influence of popular clamour and prejudice, and uniformly arrive at conclusions which the experience and deliberate judgment of mankind approve. The *communis sensus*, intended by Erasmus, seems plainly, from its contrast with *judicium vulgi*, to be what Sir William Hamilton happily designates “community of social sentiment,” which, also, he reckons among the significations of *communis sensus*.

The concord of many in one opinion gives to it an amount of probability, dependent on the number of persons concurring, the evidence from which they conclude, their powers of judgment, and the degree to which they have been exercised. The way in which mere numbers operate to give weight to an opinion, is by elimination of the effects of the partialities and idiosyncrasies of individuals. It is in this way that we must understand that saying of Hesiod, quoted in the Dissertation just referred to:—

Φήμη δ' οὔποτε πάντων ἀπόλλυται ἥντινα πολλοὶ
 Λαοὶ φημίζουσι.

"The saying spoken by many never altogether perishes."

But though consentience gives weight to an opinion, it cannot of itself prove it. There have been cases in which the judgment of one man has prevailed against that of all the world beside. There was a time when public opinion universally declared the earth to be immoveable: it moved, nevertheless. It were an endless task to cite from history the occasions in which the judgment of whole nations has gone astray in matters of the most momentous importance to their welfare. Far more brief would be the task of enumerating the instances in which the national judgment has directed political action in accordance with wisdom and justice only. The same sort of public opinion which reared the golden calf at Horeb, enthroned the Goddess of Reason in Nôtre Dame at Paris. In the one case, the lawgiver, by the strength of a wisdom not his own, brake the idol; in the other, it had been well for France to have possessed rulers mighty, in like manner, to resist public opinion. And can we say that such public opinion is extinct? Dare we affirm that public opinion has ceased to set up the golden calf and the altar of Reason? Or do we need more solemn rebuke of the pride of humanity which exalts popular judgment overmuch?—To the end of time will resound the

warning echo of that fearful cry,—Not this Man but Barabbas.

If we trust to the teaching of history, we must look for other tests of the accuracy of public opinion, besides that which mere consentience affords. Public judgment is not exempt from all the infirmities of individual judgment; on the contrary, while, on the one hand, it possesses one claim to accuracy which private judgment does not possess, on the other hand, public judgment is subject to a cause of error to which private judgment is not subject. The claim to accuracy peculiar to public, as distinguished from private judgment, is the process of *elimination* of private prejudices and predilections already mentioned. Where the opinion pronounced is the broad result of the comparison of many opinions, it must contain that part only of them which is common to them: the necessity of concord in pronouncing a public opinion, requires the concession of individuals, that their peculiar “crotchets” shall remain unexpressed.

The source of error peculiar to public, as distinguished from private opinion, arises from sympathy. No one can have calmly noted the demeanour of a public assembly without observing the infectiousness of the feeling of the majority. Many a politician has obtained a majority of votes by confident assertion that he is secure of it. This influence of social sentiment will often induce an assembly to

commit acts of folly and violence, of which its members would individually be incapable. It has been a matter of common observation, that no cruelty is less sparing, no prejudice more intolerant, no mania more completely destitute of reason, than that of an impassioned multitude. Men who, individually, are humane, tolerant, and sensible, collectively, are comparatively incapable of exercising their feelings and judgment voluntarily. By mutual pressure their thoughts are wont to become confluent, like many waters mingling in a current and flowing all by one way—often by a very devious way, through barren plains—often by a self-destructive way, over vortices insatiable, and treacherous quicksands—often by a dark way, through gulfs and chasms which the light of heaven does not penetrate—often by a way of violence and destruction down mountain steeps, through rocky barriers, and over sudden precipices; sometimes by a right way, a noble stream flowing calmly and magnificently onwards, fertilizing the earth, and bearing rich freights of blessings for the whole human race.

The proper tests of the reasonableness of public opinion do not greatly differ from those by which the value of private opinion ought to be estimated. I say "ought to be estimated," because the way in which the value of an opinion, public or private, is estimated, and the way in which it ought to be estimated, are often very different. A most dogmatical

and confident assertion of an opinion, an importunate reiteration of it, ridicule or denunciation of opposition to it, fluency and felicity in expressing it, and fertility in illustrating it, adaptation in time and place to the feelings of those to whom it is addressed, will almost inevitably gain for it an amount of assent denied to cautious abstract reasoning. But let us consider what evidence the circumstances, under which an opinion is expressed, really afford of its correctness. To prevent the complication of this question with any other, that is, to judge of the value of an opinion *solely* from the manner in which it is formed, we must suppose that either we do not know what the opinion is, or have no opinion of our own on the subject on which it is expressed, or refrain from comparing the two opinions. In either such case our confidence in the opinion of another, will reasonably depend on an estimate of his knowledge of the subject, of his power of reasoning correctly on similar subjects, of his deliberation and impartiality in exercising that power. The absence of either of these elements deprives his opinion of weight. If, moreover, by subsequent experience, the anticipations of his opinion be partially confirmed, it acquires additional weight.

Simple as these considerations are, they afford the means of avoiding much error in estimating the value of public opinion. But in applying them for that

purpose we are met by this difficulty—in estimating the value of a private opinion we usually know something of the abilities exercised in forming it—in estimating the value of a public opinion, we are frequently driven by the absence of that knowledge to infer, from external signs, the existence of the correlative intrinsic elements of value. The degree of knowledge on which a public opinion is founded, is to be estimated by considering the opportunities which the class, forming that opinion, have had of acquiring knowledge respecting it, and the extent to which they have probably availed themselves of those opportunities. Of the degree of public information on any topic, the frequency of public discussion is a partial, but not always a safe test; for in public discussion, by speaking and writing, the most interesting view of a question is very frequently preferred to the most instructive view of it. And if the question be one which requires for its right understanding critical knowledge and difficult research, one essentially involving numerous complicated details of statistics, history, or policy, respecting which the state of literature shows that there is no public curiosity—the public zeal without knowledge upon such a question,—the zeal which is usually greater the more complete the want of knowledge—may be simply regarded as highly useful to a popular “ministry.”

Of the external tests of the value of a public

opinion, its gradual and quiet progression is, perhaps, that least liable to error. The permanence of an opinion affords evidence of the absence of transitory errors; the generality of an opinion of the absence of local errors. If an opinion be slowly formed, continually progressive, and calmly expressed, it is almost certainly the result of deliberation verified by experience. But, under a system of party government, public opinion, while quiescent, has little influence: however clearly it may be perceived that a majority of intelligent opinions is in favour of any important political measure, it is seldom adopted till the public voice is roused by opposition to demand it clamorously. "There is," says an admirable modern essayist, respecting this subject, "a good deal in modern government which seems to me very rude and absurd. There comes a clamour, partly reasonable; power is deaf to it, overlooks it, says there is no such thing; then great clamour: after a time power welcomes that, takes it to its arms, says that now it is loud it is very wise, wishes it had always been clamor itself."*

The earnestness with which a public opinion is expressed seldom affords a criterion of its accuracy. That earnestness almost always depends, partly, on circumstances independent of the value of the opinion itself. The activity with which the espousers of a

* *Friends in Council*, book i. chap. vi.

particular cause agitate it, an infelicitous act or expression of a political opponent which can be used to stimulate popular resentment, an occurrence which appeals to popular enthusiasm, or compassion, or anger, must usually intervene, even in the justest cause, before public opinion will be expressed loudly respecting it.

The art of "working" public opinion furnishes occupation to a large class of persons, by whom the topic of the day is invested with a commercial or political value, commensurate with its public interest.

The just influence of public opinion on legislation is obviously twofold—for the improvement of laws and for the stability of government. For the former the moral, for the latter the numerical strength, of public opinion is most to be regarded. The reasonableness of *communis sensus* tends to the good making of laws; the concurrence of *judicium vulgi* to their good working. Moreover, this *communis sensus*, or reasonable public judgment, promotes good legislation, indirectly, by acting as a palliative of the evils to which every system of representative government is in some degree liable—party-spirit, political exclusiveness, parliamentary loquacity, mob-service, and court-service. Frequently, the really greatest legislators, those who have initiated the greatest changes in laws, have never sat in Parliament. Adam Smith, by the power of his pen

alone, produced most momentous reforms of economical legislation. In like manner, Beccaria exercised a potent influence to mitigate the barbarities of the penal codes of Europe; and the noble John Howard, by a life occupied, and at last sacrificed, in the cause of humanity, successfully attacked the system of prison discipline with its train of enormous abuses and crimes. These and innumerable other benefactors of mankind have legislated, not directly by parliamentary power, but indirectly by the influence of public opinion.

It is a problem of great difficulty and great importance, to determine when legislation should anticipate public opinion, and when wait for it. That public opinion cannot be a universal guide of legislation is clear from this consideration—that on many subjects of legislation public opinion can never be expected to be expressed; for their technicalities deprive them of general interest. In other cases public opinion comes too late. A great evil is irremediably inflicted, an abuse becomes inveterate, before public attention is directed to it. It is clear that the remedy of a political abuse is often enormously increased by the growth of vested interests which it fosters: for not merely is the reform obstinately opposed, but real hardship is inflicted by the injury of interests created by an erroneous system of legislation. Such evils are inevitable under a system of legisla-

tion, which is exclusively attendant on public opinion. On the other hand a system of statesmanship, which continually anticipated public opinion, would be very apt to run directly counter to it, and to be thwarted by unanticipated difficulties. Legislation may be too soon as well as too late—may meddle as well as neglect. There is always, if it could be discovered, a right time for legislation, which may precede, or may follow, the expression of public opinion. The determination of the right time, in each case, depends chiefly on the consideration that the provident policy which precedes public judgment, oftentimes prevents injustice and strife, while the policy which attends on public judgment, frequently promotes acquiescence in the laws and the stability of government. Indubitably that is a most incautious policy which never waits for public judgment; doubtless that is a despotic policy which disregards public judgment; but equally certain is it that the policy which will not act till it be moved by popular agitation, is recklessly improvident, and by abnegation of the functions of Parliament, tends ultimately to the subversion of constitutional liberty.

CHAPTER XVIII.

PUBLIC MEETINGS AND THE PRESS.

PUBLIC opinion is expressed by petition, political meetings, and the press. The former of these important legislative influences has been already noticed—the two latter remain to be considered.

There are many laws against political associations having a tendency to endanger government or the public peace. The statute 39 Geo. III., c. 79, provides that every political society shall be deemed an unlawful combination and confederacy of which members take any *oath* or *test* or subscribe any declaration or engagement not required or authorized by law ; if the name of any member be kept secret, or if there be any committee or officer not known to the society at large ; if the names of the committee and officers be not entered in books open to the inspection of all the members ; if the society be composed of branches acting separately, or having distinct officers or delegates elected to act for each branch. Exceptions are

made in favour of societies for religious or charitable purposes, and lodges of Freemasons.

By another Act, 57 Geo. III, c. 19, every society or club that shall elect or employ any *committee, delegate, representative, or missionary*, to meet or communicate with any other society or club, or any committee, &c., thereof, or induce any persons to become members, is subject to penalties, which are also imposed for corresponding with, or supporting such a society. Recently, "friendly" societies have been exempted from the operation of this and the last-mentioned Acts.

Every house or place in which any person shall publicly lecture or debate, or which is opened for reading any publications, and to which admission is obtained by money or tickets, is deemed a disorderly house, unless licensed by two or more justices. There are exceptions in favour of the Universities, &c. A practical protection to literary and debating societies is contained in the recent provision, that prosecutions against such societies must be commenced in the name of the law officers of the Crown.

Any person administering, or being present at and consenting to the administering, oaths or engagements intended to bind persons in any *mutinous or seditious* purpose, or to *disturb the public peace*, or to be of a society formed for such purpose, or to obey orders of any leader, committee, or body, not lawfully con-

stituted, or not to inform against any confederate or associate, or not to reveal any *unlawful combination*, or illegal oath, or act done or intended, or taking any illegal oath without compulsion, may, by 37 Geo. III., c. 123, be adjudged guilty of felony. Societies having for their object the confiscation of land or funded property are illegal.

A public meeting is deemed seditious and unlawful when assembled under such circumstances of terror, arising either from the excessive numbers, or alarming manner of assembling, or the violence of the language employed, as to endanger public peace.

It is unlawful to convene a meeting exceeding fifty persons in any street, square, or open place, in Westminster or Middlesex, within *one mile of the gate of Westminster Hall* (except St. Paul's, Covent Garden, and the parish meetings of St. John's and St. Margaret's), for the purpose of petitioning the Queen or Parliament for alterations in matters of Church and State, on any day on which Parliament sits, or the judges sit in the Courts of Westminster.

A meeting of three or more persons assembling under such circumstances as, in the opinion of rational men, may endanger the peace, is unlawful. But it would be for a jury to determine how far such apprehensions were reasonable.

A riot is a tumultuous disturbance of the peace by three or more persons. By the Riot Act, if *twelve*

or more persons continue unlawfully assembled, to the disturbance of the peace, for one hour after being commanded by proclamation of one justice of the peace, sheriff, or under-sheriff, to disperse, they are guilty of felony. Silence must be commanded, and proclamation made in words to this effect :—

“ Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act of the first year of King Geo. I., for preventing tumults and riotous assemblies. God save the Queen !”

Those who oppose or hinder the reading of the proclamation, and those who, after such proclamation, or knowing such hindrance, do not disperse, are liable to be adjudged felons.

The practical operation of the laws against political assemblies of a dangerous kind can hardly be considered unnecessarily severe. The protection of trial by jury is an effectual provision against any arbitrary attempt to restrain public discussion of politics. Indeed, such discussions are in practice entirely uncontrolled by Government, and prosecutions of political bodies are now unknown. Persons of all shades of political opinions are at liberty to meet, when and how they will, provided that they meet openly and peaceably, and may say very much what they please

for or against the Government. Their meetings, however, are almost universally characterized by order and decorum ; partly, because the constitutional habits of the people induce them to affect something of a parliamentary method in debate ; partly, because loyalty is universal, and violent political animosities are rare ; partly, because scurrility of the speakers, and unfair attacks on public men or private character are found to be much more effectually restrained by the criticism of an English audience influenced by a characteristic love of fair play, than by a criminal prosecution.

The laws relating to the public press may be now briefly alluded to, with this preliminary remark, that the liberties of the public press and of public meetings are secured, not by laws in their favour, but, as De Lolme remarks, because there are no laws to enthrall them, and because the power of the executive is derived from the laws only.

The censorship of the press exercised in England by the Star Chamber, vigorously enforced by Cromwell, who, in 1653, by an order of Council, ordered, that *no person presume to publish any matter of public news or intelligence, without leave and approbation of the Secretary of State*, and continued after the Restoration, finally ceased in 1694, in the reign of William III. The press in Great Britain is now entirely unfettered by any legal censorship, but is

subject to the laws of libel. A libel has been defined to be a publication without justification or lawful excuse, which is calculated to injure the reputation of another by exposing him to hatred, contempt, or ridicule.*

To complete the offence of libel, *publication* is necessary. The offence is punishable by indictment or by action. Indictment is for the public offence—for every libel has a tendency to a breach of the peace. The civil action is by the party injured, to recover damages for the injury caused by the libel. In a civil action the libel must appear to be *false* as well as scandalous; but in a criminal prosecution the truth of the publication was formerly held to be no defence of it. But, now, the truth of the matter charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published.† Publication of a full, true, and entire account of proceedings in a court of justice, upon a trial, is not in general libellous, but it has been held to be an indictable offence to publish *ex-parte* proceedings before a magistrate.

By 11 Vict., c. 12, compassings, imaginations, inventions, devices, or intentions, &c., to depose the Queen, to levy war against her, in order, by force or constraint, to compel her to change her measures, or

* 6 Meeson and Welsby, 108.

† By 6 and 7 Vict., c. 96. By the Act 32 Geo. III., c. 60, usually called Mr. Fox's Act, the jury may give a general verdict upon the whole matter put in issue.

counsels, or to put force against, or constraint upon, Parliament, or to incite invasion of this realm and its dependencies, are declared to be *felony*, if expressed, uttered, or declared, by publishing any printing or writing, or by open and advised speaking.

Every copy of a newspaper printed in the United Kingdom is required to bear a stamp, on which the duty is one penny, and every newspaper supplement is charged with a duty of one halfpenny. As a set-off against these charges, the newspapers are conveyed freely by the British Post-office. The anomalies and ambiguities of the laws relating to the duties on newspapers and the postal regulations respecting them are subjects of great complaint.

The stamp duties on newspapers act as an effectual bar to the reduction of their prices; and the cost and size of newspapers are far greater in this than in all other countries. If, however, a smaller duty were imposed here for papers of less size, it might, perhaps, be possible, without injury to the revenue, or to the circulation of large newspapers, to extend the operations of the press in new directions by the publication of *abridgments*, suited to the wants of readers, who have not the means of purchasing or the time for perusing large newspapers. It seems both prudent and reasonable to give the poor extended means of acquiring political instruction.

An English newspaper is certainly a marvellous

production. The immense amount of intelligence which issues every morning from the press has, for the most part, been collected from innumerable sources in all parts of the kingdom but a few hours before. From the senate, the forum, and the mart, from the highways of commerce by sea and land, from the thronged streets and crowded ports, from every great haunt of men, every seat of political events throughout the globe, and by the most refined mechanical means, the information of the daily sheet has to be collected. How many agencies, political, material, and intellectual, are at work to produce it ! and every one of them is a condition essential to its production. An English newspaper is an example of the combined effect of free institutions ; for were not the national institutions free, free criticism, the very life of the press, would be impracticable ;—of immense energy ; for the powers, mental and mechanical, which are at work the livelong night to produce the morning newspaper, are taxed to their utmost ;—of division of labour ; for unless the labours of reporting, editing, and printing, were divided according to a system, carried, apparently, to the pitch of perfection, the most vigorous energy, and the most robust powers of endurance, would be inadequate to the accomplishment of the required task ;—of the resources of vast capital ; for of every part of the civilized world the news is collected, digested, and

recorded ;—of extensive learning ; for nearly every branch of history, law, political economy, literature, æsthetics, ethnology, statistical lore, and constitutional and moral philosophy, is laid under contribution ;—of mechanical genius, for the most subtle contrivances are necessary, in order to effect the printing with sufficient rapidity ;—and, lastly, an insatiable public appetite for political knowledge ; for it is this universal demand which alone sustains the exertion of those energies by which a newspaper is produced.

Enormous as is the power of the press, it can seldom be exercised despotically, for the numerous periodical publications mutually check each other, and are all subject to the restraint of public opinion. It is undeniably true, that as the liberty of the press has become more completely established—the licentiousness of the press has greatly diminished. When prosecutions against the press were rife, the malignant diatribes of a Junius against an imbecile king, the vile rancour of a Swift towards a party, against whom he directed his venal pen, because they would • not give his own price for it, were rendered palatable, partly by the pungent language in which scurrility was dressed, and partly by popular sympathy with sufferers by State prosecutions. But similar attacks upon the Crown and Government would not be tolerated now for the sake of their epigrammatic diction. This improvement of the tone of the

press, and of public feeling, of which it is the echo, is to be attributed to an enduring cause—namely this, that constitutional freedom is now so well ascertained, that the unwholesome stimulant to political virulence no longer exists.

We are, for the most part, sensible of the inestimable benefits which result from the freedom of the press ; but it is well to recollect, that that freedom has required the most earnest and persevering efforts of enlightened advocates for its final establishment. That their glorious work may be remembered, let us hear how one of the greatest of them pleaded for that liberty.

“ I deny not,” says Milton, in his *Areopagitica*, a speech for unlicensed printing, “ but that it is of the greatest concernment in the Church and Commonwealth to have a vigilant eye, how books demean themselves as well as men ; and thereafter to confine, imprison, and do sharpest justice on them as malefactors : for books are not absolutely dead things, but do contain a progeny of life in them to be as active as that soul was whose progeny they are ; nay, they do preserve, as in a vial, the purest efficacy and extraction of that living spirit that bred them. I know they are as lively and vigorously productive as those fabulous dragon's teeth ; and being sown up and down may chance to spring up armed men. And yet, on the other hand, unless

wariness be used as good almost kill a man as kill a good book ; who kills a man kills a reasonable creature, God's image ; but he who destroys a good book kills reason itself, kills the image of God, as it were, in the eye. Many a man lives a burden to the earth ; but a good book is the precious life-blood of a master spirit, embalmed and treasured up on purpose to a life beyond a life. It is true no age can restore a life, whereof, perhaps, there is no great loss, and revolutions of ages do not often recover the loss of a rejected truth, for the want of which whole nations fare the worse. We should be wary, therefore, what persecution we raise among the living labours of public men, how we spill that seasoned life of man preserved and stored up in books."

Thus, in high and thrilling tones, Milton pleaded for the life and liberty of books, and his example pleaded even more potently than his words. Who can describe adequately those inestimable powers whereby all the treasures of human thought are poured plentifully upon the earth—the power of Speech—the power of Letters—and the power of Printing ?

First, was the gift of Speech. Or ever the voice of man was heard, nature was vocal, and resounded with sweet harmonies. The herds lowed in their meadows, and the flocks bleated on the hills then as now. The summer winds sighed, and the forest

leaves rustled as softly as now. The rill rippled as melodiously, and the hum of insects made as pleasant music as now. The nightingale sang as sweetly on the bough, and the dove called from her leafy covert as plaintively as now. On lonely shores that wound and stretched far leagues away, as the ceaseless billows rolled inward ever,—and ever,—and ever,—and tumbled heavily upon the low broad strand; or as the crested surge lashed the cliff and headland, and leaped up their steep sides, the great waters sounded as they are sounding this very day. As the mighty avalanche rolled down the mountain slope—plunged booming over precipices unfathomed—then buried itself in the abyss profound, it tolled its own muffled knell then as now. When the firmament lifted up its voice in thunder, the flash rended sharply the storm-cloud, and the peal echoed and re-echoed awfully along the vault of heaven then as now. Full and glorious were the harmonies of primeval nature. The magnificent choir of created things sang in symphony sublime. But one sound, the noblest of all, was not yet heard. Earth was still voiceless. Speech—the thought-compelling speech of man—rang not out upon the void.

But man was created, and God gave him the excellent gift of Speech. How great was that gift! Therewith men became fellow-helpers. The pur-

poses of each will, the aspirations of each soul, the subtle workings of each brain, the emotions of each heart, were imaged in speech. The store of knowledge and wisdom was not merely what each man gathered for himself, but a common stock accumulated by memory and diffused by speech. Without speech the mind of man dwelt in darkness and solitude; speech brought it into light and communion; shone in upon the palace of the soul; invested with form its thoughts, else viewless; gave men, as it were, a key whereby they might open, and a lamp whereby they might walk through its chambers, else dark and inaccessible.

Next came the gift of Letters. The records of memory and tradition were perishable and uncertain. The greater part of the knowledge which men acquired by painful learning, in one generation, was continually lost to the next. Rhythm, indeed, had lent aid to memory. The bard sang rhapsodies of ancient deeds of heroes, and rehearsed the wanderings of adventurous travellers in distant lands. Architecture and sculpture had lent their aid, and rudely recorded old exploits that had else been forgotten. But the records of minstrelsy and monuments were uncertain, delible, and imperfect. Sciences which required continuous research and progressive learning, faithfully and exactly preserved,

were unattainable. But writing gave the required means of their attainment. Though the fabled dragon's teeth were sown in mythic significance only, the Cadmean gift of letters produced armed men in very truth. Then the roll of history was unfolded and the dark mists of tradition began to disperse.

Last came the gift of Printing; and the voices of generations heard feebly erewhile, now sounded clearly and aloud. The written scroll was read by few; but the printed book was a revelation to the whole earth. The voice of the orator could be heard at once by a few hundreds at most; but the voice of the book proclaimed itself to myriads innumerable. The author of a great book became a councillor with whom all the world sat in conclave; an orator who had mankind for his audience. Wonderful power! That men could tell their subtlest thoughts one to another was marvellous—that they might record them from generation to generation was marvellous; but that they might find so mighty an utterance, that the whole earth should be filled with the sound thereof, was a marvel of power so sublime, that imagination essays in vain to measure it.

Printing is a light of nations. Heretofore, the people scarcely saw each other's strivings after liberty, and, in their blindness, despotism made its security. But printing gave a light to pierce the thick clouds of superstition that brooded so long and so darkly on

the earth, and as they rolled heavily off its surface, the human family first saw each other face to face. Printing is the voice of nations. Heretofore they spake not one to another. Silent, they wist not of each other's strength; and their silence was to oppression a panoply. But printing came, and the chains of the captive fall off one by one. Printing came, and the spell of silence was broken. The voice was as the puissant blast of a trumpet, calling the whole world to battle. The tongues of nations were unloosed; the mute nations found utterance; the dumb nations spake.

When, in that old German city, the first printer wrought cunningly in metal the types of letters, how little knew he of the might of the spirit which he evoked! From that time until now that spirit has been at work continually, and with continually-increasing power. In the four centuries which have since elapsed, science has gained more trophies than during all the preceding ages of the earth. The orbs of heaven have been measured, their pathways discerned, their distances meted, their labyrinthine movements traced to one harmonious law. The wonderful architecture of this globe has been revealed—the story of her birth told to men. The subtle laws of light, and the secret causes of its magnificent phenomena, have been discovered. The affinities and combinations of the elements have been revealed,

and their mighty agencies serve man at his bidding. Arts innumerable have been invented, and thereby the productive power of human industry a thousand-fold increased. While knowledge of the material world has thus progressed, and human dominion over it extended, abstract research has made like progress. History, no longer a mere chronicle of vanity and crime—no longer a chronicle prepared to exalt crime into heroism and vanity into glory—has become more exact, more complete, more useful,—dignified by nobler purposes, and invested with authority suited to its high behests,—an inductive philosophy teaching by example truths of world-wide moment. Politics, once the crude jargon of schools, that took no note of human wants and passions, or the code from which kings learned the art of ruling their subjects by political superstition, and beguiling each other by diplomatic dissimulation—now takes a loftier range indeed—teaches the families of mankind how they may live together happily and well, supplants political superstition by reasonable loyalty, and baffles diplomatic dissimulation by the profounder policy of truth. Political economy instructs men how they may best use God's bounties, so that they may be gathered more abundantly, and all may be, as all were intended to be, ample partakers of them.

Above all, while knowlege is thus increased in

things pertaining to the temporal welfare of mankind, the only knowledge which is eternal has been diffused more abundantly by printing. It was nobly said of the Bible by one of England's worthies—Sir Thomas Brown—"Men's works have an age like themselves, and though they outlive their authors, yet have they a stint and a period to their duration. This, only, is a work too hard for the teeth of time, and cannot perish but in the general flames, when all things shall confess their ashes."

From its very commencement, typography was employed for the diffusion of the sacred Scriptures, and to it may be clearly attributed an important share in the religious reformations of Northern Europe. Omitting here all higher considerations, who can adequately estimate the political benefits of the printed Bible? Its influence has been felt by those who never knew its inspiration. It has subverted the inquisition, crumbled the walls of torture-chambers, sternly reproved the licentiousness of courts, imposed on governments rules of honesty, restrained sedition from thirst of blood, has curbed, and shall by God's grace destroy, ere long, the hellhounds of war. The courtier may profane the Bible with hollow compliments, and the demagogue insult it by false philosophy, but both courtier and demagogue yield to its sway. The Hindoo may not know why the murderous rites of Juggernaut have ceased,

nor the African slave why his manacles are loosed ; but we know the reason to be that the myriads of the West have a book wherein they read "Thou shalt love thy neighbour as thyself." Of yore that truth was preached by the blood of martyrs. Now it is proclaimed by the million-tongued voice of Printing.

CHAPTER XIX.

COMMISSIONS OF INQUIRY.

A VERY valuable and interesting part of the English legislative system is the institution of public inquiries, by means of Royal Commissions, respecting subjects upon which it is important that Parliament should receive authentic information. These inquiries are instituted by the exercise of the Royal prerogative. The sovereign, by a *commission* which is issued under the sign-manual, or by patent under the Great Seal, authorizes certain persons named in the commission to inquire respecting the subject specified, and to report thereon to the Crown within a convenient period of time. The commissioners so appointed are usually persons eminent for knowledge of the subject on which they are to inquire, and in most cases perform their services gratuitously. Commissions of Inquiry are issued by the Crown, sometimes in accordance with Acts of Parliament, directing particular inquiries; sometimes in compliance with

addresses from the Houses of Parliament ; sometimes by the sole authority of the Crown, exercised upon the recommendation of its responsible advisers.

The commissioners usually proceed to invite the attendance of persons qualified to give appropriate information, whose oral evidence is taken in shorthand, and subsequently printed with the report of the commissioners, which is generally presented to both Houses of Parliament by Royal command. The commissioners also frequently receive written communications from competent persons ; and where the inquiries are of a scientific nature, institute experiments. The evidence received is voluntary, and not taken on oath, unless power of compelling evidence and administering oaths be given by Act of Parliament. A secretary is usually associated with the commissioners, to assist them in the discharge of their duties, and provision is made for their accommodation, and their expenses are defrayed by the Treasury. For the reimbursement of the latter, a vote is proposed for a parliamentary grant. The labours of the commissioners are usually confined to inquiries, and terminate with their making their report.

The magnitude of the interests affected by Commissions of Inquiry ; the diversity and frequent complexity of the subjects investigated by them ; the particular eminence and learning of the persons chosen to be commissioners ; the profound and elaborate

nature of their reports; the authentic character of the accompanying evidence, and the able manner in which it is generally methodised and indexed, render the "blue books" produced by the commissions most interesting and valuable contributions to political, legal, philosophical, and statistical knowledge. Some of the most important legislative enactments of late years have been founded on such reports, and in many cases have been in close conformity with the recommendations of the commissioners.

The subjects of these inquiries are very various. Among the subjects for the investigation of which commissions have been recently instituted are the state and operation of different branches of the law—the practice and procedure of legal tribunals—the conduct and management of different departments of administrative government—the state and revenues of institutions publicly endowed for purposes of religion, education, and charity—the condition of institutions of local and municipal government—the condition of particular classes of the community, and the operation of laws affecting them—the state and advancement of various branches of art and science pursued for public purposes.

The authority of Royal Commissions, and the nature of the prerogative power of the Crown by which they are constituted, have been made the subjects of parliamentary and legal discussions. The questions

at issue in these discussions seem to be—(1), whether the Crown can constitutionally commission persons to invite the voluntary contribution of information ; (2), whether the Royal prerogative can invest commissioners with the compulsory power of obtaining information. There seems little difficulty in deciding on the first point, when it is considered that a denial of a power in the Crown of inviting voluntary information would be the denial of a power possessed by all classes of the community ; that Royal Commissioners anciently derived from the Crown far more extensive powers ; and that modern practice has, with the complete approbation of the nation, sanctioned Commissions of Inquiry not possessed of compulsory power. At the same time, it should not be overlooked, that the extent of this, as well as several other branches of Royal prerogative, stands somewhat in need of definition. Doubtless, much of the opposition to these Royal Commissions has arisen among persons whose prejudices or selfish interests have rendered them adverse to public inquiry. But, on the other hand, it should not be forgotten that the method of inquiry by Royal Commissions is susceptible of abuse. Though the practice be now otherwise, it is, at least, possible that the inquiry may be partial and unfair. The jealous regard of our ancestors for constitutional liberty induced them to carefully regulate the procedure of courts of law, so that no man should be

condemned unheard, or damnified by *ex-parte* statements. At a very early period, English judicature was nobly distinguished from that of other nations, by the invariable rule of acquainting the accused with the nature of the accusation, and requiring the accuser to meet him face to face. The constitutional sensibilities of the people nowhere appeared more clearly than in their antipathy to tribunals in which this principle of fair play was not observed. Now, the respect of Commissioners of Inquiry for their own characters would render it excessively improbable, that they should, in investigations which frequently affect interests of vast magnitude, purposely conduct a one-sided inquiry, but it is quite possible, that by oversight or misapprehension, they might do so. Moreover, the information given before these commissions is not necessarily truly voluntary. It *may* be extorted by the necessity of meeting an unjust charge made for private purposes. From both the foregoing considerations we may infer, that the necessity may hereafter arise of establishing, by law, some general rules of investigation by Commissions of Inquiry, which at present have no established course of procedure, and, when once constituted, proceed in a great degree independently even of the Administrative Government.

The question respecting the possession of compulsory powers by Commissions of Inquiry is one involving no

little difficulty, and requiring research in obscure parts of the English law. The balance of authorities seems in favour of the conclusion, that these commissions cannot be armed with power to compel the giving of evidence by the Royal prerogative unaided by Act of Parliament.

Coke, in the fourth part of the "Institutes," cap. xxviii., says: "Commissions are like the king's writs, such are to be allowed which have warrant of law and continual allowances in courts of justice. For all commissions of new invention are against law, until they have allowance by Act of Parliament. Commissions of *novel inquiries* are declared to be void; 18 Edw. III., cap. 1. Commissions to assay weights and measures (being of new invention) are declared to be void, and that such commissions shall not be after granted."

A subsequent Act of Parliament, of the same reign as that cited by Coke, recognized Commissions of Inquiry. By 43 Edw. III., cap. 4, "in all Inquiries within this realm commissions shall be made to some of the justices of assize, or justices of the peace, with others of the most worthy of the country, as well for the king's profit as the commons (saving in the office of the Escheatorship, or thing that toucheth the same office)."

The resolutions in Lord Coke's Reports (12 Co. 31, "Commissions of Inquiry") have been cited as

authority both for and against Commissions of Inquiry; but the language in a material passage is obscure and contradictory, and, as is acutely pointed out in the "Law Magazine," vol. xv., 1851, is probably corrupt. For an account of this controversy, and authorities on the subject, the reader, who is curious respecting it, is referred to the last-mentioned work.

Both Houses of Parliament have powers of instituting inquiries for purposes similar to those for which Royal Commissions of Inquiry are constituted. Such parliamentary inquiries are conducted by select committees (as has been already noticed) respecting subjects specified by the order of reference, or by subsequent instructions of the House. Both Houses possess power to enforce the giving information to committees, by punishment for contempt of the Houses themselves. Parliamentary committees sit only during sessions and (except by special leave), can sit only during the intervals between *daily* sittings of the House; they are not therefore so suitable for conducting inquiries which require protracted research or local information, as Royal Commissions.

CHAPTER XX.

DIVISIONS OF LAW.

THE supreme legislative power, its operations, constitution, and the influences to which it is subject, having now been treated of, we come to the consideration of the second principal division of our domestic government—The Judicature.

The Judicature consists of several courts of law, or tribunals, constituted to try questions respecting the infraction of laws; and the different tribunals have different jurisdictions according to the nature of the laws of which the infraction is questioned. It would be very desirable to give a precise classification of the several jurisdictions, and of the laws which they administer. But both classifications are matters of difficulty, and very eminent legal writers have been inexact in distributing laws and tribunals into classes. Even in so high an authority as Sir William Blackstone, we find distinctions established where differences are not to be discerned. "The primary objects of laws," he remarks,* "are the establish-

* Commentaries, Book III. Chap. i.

ment of rights and the prohibition of wrongs. And this occasioned the distribution of these collections into two general heads; under the former of which we considered the *rights* that were defined and established; and under the latter are now to consider the wrongs that are forbidden and redressed by the laws of England." But it can hardly be said that the laws are thus distinguishable into two separate classes, for the violation of every right is a wrong, and the prohibition of every wrong presupposes the existence of a corresponding right: so that necessarily every operative law establishes a right and forbids a wrong simultaneously.

It is remarked further by the same author,* that "Wrongs are divisible into two sorts or species; private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are, thereupon, frequently termed civil injuries: the latter are a breach of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of crimes and misdemeanours." But it may be submitted, that this is no more than giving public and private wrongs other names, and establishes no definition of them; as the infringement of every right—and, therefore, of what are here

* Commentaries, Book III. Chap. i.

called private rights—affects the whole community. For is it not a matter of interest to the whole community that the laws of property, which includes the private rights here referred to, should be upheld? And, on the other hand, the violations of public rights, here distinguished as crimes, for the most part, affect the interests of individuals particularly, as well as of the community generally. It may be said, indeed, that an offence so heinous as murder, affects the community more directly than an invasion of a right to land; but this distinction is one of degree only, not of nature: and it is obvious that there may be civil injuries of so great magnitude, and offences publicly prosecuted, which are so small, that society may be affected to a greater extent by the former than by the latter. Blackstone illustrates the distinction which he makes between public and private wrongs as follows:—"As if I detain a field from another man to which the law has given him a right, this is a civil injury, and not a crime; for here, only the right of the individual is concerned, and it is immaterial to the public which of us is in possession of the land: but treason, murder, and robbery, are properly ranked among crimes; since, besides the injury done to individuals, they strike at the very being of society, which cannot possibly subsist if actions of this sort are suffered to escape with impunity." But neither can society

subsist if civil injuries be unredressed; and it is not correct to say that it is immaterial to the public which of two men possess a field; the protection of property, as well as of persons, is essential to the very being of society.

The Roman law distinguished between *jus publicum* and *jus privatum*. The former is defined to be *quod ad statum rei Romanæ spectat*—what concerns the state publicly; *quod in sacris, in sacerdotibus, in magistratibus consistit*. The *jus privatum* is *quod ad singulorum utilitatem pertinet*—what appertains to the interest of individuals. But that these definitions are not sufficiently precise to distinguish between civil and criminal wrongs, is clear from the fact that some jurists excluded criminal law from, and some included it in *jus publicum*. Nor is it sufficient to say that criminal wrong is that which is attended by punishment; for many civil injuries are restrained by penalties; and costs awarded in civil suits are sometimes said to be awarded by way of punishment. Again, it would not be correct to say that injuries are public or private, accordingly as they are proceeded against by a public or private prosecutor.

It appears to me, however, that a simple but sufficient distinction between private and public wrongs is, that the former infringes upon rights which are essentially *individual*, the latter on rights which are essentially *general*. In a prosecution for corporeal

injuries (for example) it is not necessary to prove the right which the person injured has in common with the rest of the nation to the security of his person. But if he bring an action for damages for false imprisonment, or injuries by a railway accident, or the unskilfulness of a surgeon, he will be required to show that his *private* condition and circumstances entitle him to a particular amount of compensation. In the case of battery or beating another, the offender may be punished criminally by indictment; and the person injured has also a private remedy by civil action. In the former case, the law is not a respecter of persons; in the latter it is—that is, in measuring the amount of civil satisfaction, it takes cognizance of private titles thereto, which differ for different persons; in awarding the criminal punishment, the title to protection is regarded as being the same for all men alike. Similarly, distinctions may be drawn with respect to public prosecution, and private action for libel. In like manner, the unlawful taking of goods may be robbery—a criminal offence,—or it may be a civil injury only. “If,” says Blackstone,* “a man takes the goods of another out of his actual or virtual possession, without having a lawful title so to do, it is an injury which, though it doth not amount to felony, unless it be done *animo furandi*, is nevertheless a transgression, for which an

* Commentaries, Book III. Chap. ix.

action of *trespass vi et armis* will lie ; wherein the plaintiff shall not recover the thing itself, but only damages for the loss of it, or if committed without force, the party may, at his choice, have another remedy in damages by action of trover and conversion." The distinction between robbery and unlawful conversion does not entirely consist in the *animus* of the act, which may be equally culpable in both cases. For instance : where goods have been intrusted temporarily to the care of a man who afterwards appropriates them, denying and violating his trust, and falsely claiming them as his own. This offence at law is no more than unlawful conversion, but morally more criminal than robbery in many cases. The criminal offence consists in the violation of the *common* right of possession—the right of all men to retain what they possess until a superior title be properly shown ;* concerning which, however, there is in this case, no question. But in the civil case, the *individual* right of possession is contested by the civil procedure.

The laws of the United Kingdom may be distinguished, with regard to the sources from which they are derived, into two kinds : 1. Those which Parliament makes. 2. Those which Parliament allows. The former are statutes and Acts, of Parliament ; the

* A man may be guilty of felony in taking his own goods from one to whom they were pawned or bailed.

latter are laws observed in and inferred from judicial decisions, and also laws and rules made by corporations and others duly authorized thereto.

The domestic laws, of which the authority is founded on judicial decisions, are chiefly—1. Equity. 2. Common law. 3. Civil law. 4. Canon law. 5. International law.* To avoid repetition, the distinctions of the kinds of law will be noticed in the accounts of the several tribunals in which they are principally administered. With respect to all judicial or “judge-made” law, it is to be observed that such law is always subordinate to that declared by the supreme legislature, and speaks only when the legislature is silent. Judicial law, which is declared by the decision of cases, and is founded on the system of recorded precedents, may be therefore regarded as supplementary to statutory law. It has been often asserted, but does not seem to have been proved, that all the law should be made by *direct* enactment. It may be submitted, however, that partly from the intricacy of social interests, and partly from the imperfection of language, it is not safe nor even possible to predetermine all rights by general definitions, to which Acts of Parliament are necessarily restricted. However carefully such

* Coke, in his first Institute, enumerates fifteen kinds of laws of England : Lex Coronæ—Lex et consuetudo Parlamenti—Lex naturæ—Common law—Statute law—Custom—Law of arms—Canon law—Civil law—Forest law—Law of marque—Mercantile law—Law of Jersey, &c.—Law of the Stannaries—Law of marches.

definitions be drawn up, experience shows that they are always liable to the disadvantage of comprising too much or too little: a comprehensive definition may constitute un contemplated rights and offences; a narrow definition may not meet cases in which the judicial law (which is inferred not from the *letter* but from the *principle* of decisions) would effectually secure the ends of justice. It would seem, therefore, in the highest degree, inexpedient to abolish judicial law, and the subordinate discretionary power of the judges, and to confine the law to Parliamentary codes only. In the laudations which have been pronounced upon the Continental codes, brevity and a method apparently philosophical, seem to have been often thought to be more admirable qualities of law than its justice and completeness.

The Courts of Law in England may be distinguished into two classes—(1), those Superior Courts which have jurisdiction throughout the country, and power to control proceedings in other Courts; and (2), those Courts which have less extensive jurisdiction. To the former class belong the Courts of Parliament, Privy Council and Chancery, the Common-law Courts of Westminster and the Exchequer Chamber. To the latter class belong the Courts of Assize and Sessions, the Admiralty, Ecclesiastical, County and Borough Courts, and the Courts of Bankrupts and Insolvent Debtors.

CHAPTER XXI.

THE COURTS OF PARLIAMENT AND PRIVY COUNCIL.

THE High Court of Parliament is the supreme court of this kingdom for the execution of laws, but its judicial functions have long ceased, excepting trial by parliamentary *impeachment*. Impeachment differs from *attainder*, in respect that the former is a procedure on established principles of law, whereas attainder is effected by special Acts of Parliament. Bills of attainder and of pains and penalties serve, or rather served (for it is satisfactory to speak here in the past tense), special objects not previously recognized by law—were, in fact, *ex post facto* laws, which punished after their commission acts not previously prohibited. Bills of attainder and pains and penalties would pass through Parliament in the same way as ordinary bills, but are so obviously contrary to the principles of justice, that it may be reasonably hoped that the times of danger and excitement which tolerated them have passed away for ever. But impeachments,

though rare, are by no means obsolete. They are prosecutions conducted before the Lords by the Commons. Their method and objects are in accordance with laws already known and established, and they proceed by a presentment to the most high and supreme Court of Criminal Jurisdiction, by the most solemn grand inquest of the whole kingdom. A peer may be impeached for any crime, but a commoner for high misdemeanours only. Upon address to the Crown a Lord High Steward has latterly been appointed, for each case of impeachment, to preside at the trial. The articles of impeachment, which define the offences charged, and are of the nature of indictments, are settled by the House of Commons, and submitted by them to the Lords.

The offences which it is the object of impeachment to punish are usually maladministration of public affairs, infraction of constitutional rights and similar crimes, of such magnitude that they cannot be properly punished by ordinary magistrates—offences so directly injurious to the whole State, that the whole people, by their representatives, are peculiarly fitted to be prosecutors, and committed by offenders so powerful that they might escape the justice of inferior tribunals. Of course the necessity for impeachment would be greatest when the Crown was active to shield its favourites, the law officers of the Crown lax in the prosecution of them before the ordinary tribunals, and

the Law Courts subject to Royal interference. But as the prerogatives of the Crown became less arbitrary and more distinctly defined by law, and the responsibility of ministers to Parliament and the independence of the judges more complete, impeachments, once a powerful safeguard of liberty, lost the greater part of their constitutional importance.

The commencement of an impeachment is a motion for it by a member of the House of Commons in that House, who charges the accused of high treason or misdemeanour, and alleges the grounds of his accusation. If they be deemed by the House sufficient, and the motion be carried, the member is ordered to proceed to the House of Lords, *and at their bar, in the name of the House of Commons and of all the Commons of the United Kingdom, to impeach the accused, and to state that this House will in due time exhibit particular articles against him, and make good the same.*

The articles are drawn up by a committee of the Commons, and upon the approval of that House engrossed. The accused answers each article, and to them replications may be made by the Commons. The accused, if he be a peer, is attached or retained in custody by order of the House of Lords; if a commoner by the Serjeant-at-Arms of the House of Commons. The Commons appoint Managers to conduct the proceedings, prepare evidence, and desire the

Lords to summon witnesses. The accused may also have witnesses summoned on his behalf, and be defended by counsel.

At a time appointed by the House of Lords the trial takes place, usually in Westminster Hall—a scene wherein have been acted many of the most momentous passages of English history. The managers open their case, and adduce evidence which must be confined to charges in the articles of impeachment. The counsel for the accused speak in answer, and examine their witnesses, and the Commons reply on the whole case.

That done, the Lord High Steward questions the peers, one by one, beginning with the junior baron present, whether upon the first article the accused be guilty or not guilty, and each peer answers on his honour. So the voice of the peers is collected touching that article ; and the rest are proceeded with in like manner.

If the accused be declared not guilty on all the articles, the impeachment is dismissed. If the accused be found guilty on any of the articles, judgment must be demanded by the Commons before the Lords proceed to give it. After the Revolution, it was declared by the Act of Settlement, that “no pardon under the Great Seal of England shall be pleaded to an impeachment by the Commons in Parliament.”

The *Court of the Lord High Steward* is instituted for the trial of peers indicted for treason, or felony, or misprision of either, and is held in the recess of Parliament when the trial by impeachment cannot take place. An indictment of treason, felony, or misprision found by a grand jury at the assizes, or in the Queen's Bench, against a peer, is removed by writ of *certiorari* into the Court of the High Steward. He is appointed *pro hac vice* by commission under the Great Seal, and is sole judge of the questions of law arising on the trial. The facts are determined by the other peers, of whom all who have a right to sit and vote in Parliament are summoned twenty days before the trial. By a standing order of the House of Lords "Bishops are only lords of Parliament, but not peers, for they are not of trial by nobility." By the canons of the Church they are restrained from voting in cases of blood; and the Constitutions of Clarendon require them to take part in trials in the king's court or council with the peers, until it comes to a question of loss of life or limb.

The *House of Lords* is a court of appeal from the inferior courts in both civil and criminal cases. In appeal cases, all the lords abstain from taking part, except those popularly styled "law lords," that is, those peers who have held the highest legal offices. The House of Lords, in its judicial capacity, is a tribunal of the last resort, from the judgment of

which there is no appeal. The appellate jurisdiction of the House of Lords extends to every class of cases, except those in which the prerogative of the Crown is supposed to be particularly concerned—as ecclesiastical, admiralty, and colonial causes. Cases of appeal to the House of Lords are generally more solemnly argued than other cases, and therefore are regarded of superior importance, as precedents. In some cases of doubt the lords will request the opinion of the judges to assist them in forming their own. The assistants of the House of Lords are the judges of the Courts of Queen's Bench and Common Pleas, and such barons of the Exchequer as are of the degree of the coif, the Master of the Rolls, the Attorney and Solicitor-Generals, and the Queen's Serjeants, who are now summoned by special order when their advice is required.

To the House of Lords are referred appeals from,
1. Decisions of the Court of Chancery. 2. Judgments of the Court of Exchequer Chamber. 3. Decisions of the Supreme Courts of Scotland and Ireland.

1. When a party to a cause in Chancery wishes to appeal to the House of Lords from a decree of an English court of equity, it must be constituted the decree of the Lord Chancellor by enrolment in his Court, and notice must be given to the agent of the respondent parties of the time of presentation of the petition, by which an appeal in Chancery to the Lords

is exhibited. The petition must be signed by two counsel, who must certify that there is reasonable cause of appeal. The petition cannot be presented after an interval of more than five years from the time of enrolment of the decree to the commencement of the session, except in case of infants and others under disability, with respect to whom the five years is reckoned from the time when their disability ceased. Counsel are heard at the bar of the House, but new evidence is not heard on appeals. "For," says Blackstone, "it is a practice unknown in our law (though constantly followed in the spiritual Courts) when a superior court is reviewing the sentence of an inferior, to examine the justice of the former decree by evidence that was not produced below."

2. The House of Lords determines appeals from the Court of Exchequer Chamber. Cases of alleged error in judgments may be transmitted to the Exchequer Chamber, to be examined there, and in a similar manner a further appeal may be made thence to the House of Lords. In the Court of Exchequer Chamber appeals on judgments of any of the three superior Courts of law, are considered before the judges of the other two of those Courts not concerned in the judgment impeached.

The Judicial Committee of the Privy Council.—All appeals, or complaints in the nature of appeals, which may be brought judicially before the Queen,

or the Queen in Council, are referrible to the Judicial Committee of the Privy Council. Such matters are heard by the Committee, and a report or recommendation thereon is made to the Queen in Council for her decision.

The nature of such report or recommendation is stated in open court. The Judicial Committee has authority to examine witnesses on oath, and to direct issues to be tried by juries, and may punish contempts and compel appearances. The Queen in Council has the same powers of enforcing judgments, decrees, and orders, as are exercised by the Courts of Chancery and Queen's Bench.

The Judicial Committee consists of those members of the Privy Council who are, or have been its President, Judges of the chief Courts of Equity and Common Law, of the Admiralty, and Prerogative Court of Canterbury, Bishops and Archbishops, two retired East Indian or Colonial Judges, and two others.

Appeals in prize, admiralty, ecclesiastical, colonial, East Indian, and lunacy causes, appeals which may be made to the Crown from any court or judges, and such other matters as the Queen may deem fit to refer to the Judicial Committee, are considered by them for the purpose of advising the Crown. The committee receive certain applications respecting the confirmation and extension of letters patent and

copyright. It appears that no appeal lies in cases of felony, to the Queen in Council, from any of the dominions of the Crown of England, which are governed by English law.* Appeals, &c., may be heard by not less than three members of the committee, exclusive of the Lord President of the Council.

* 3, Chitty's Collection of Statutes, 905.

CHAPTER XXII.

THE COURT OF CHANCERY.

THE Court of Chancery has a fourfold jurisdiction—in equity, by statute, by delegation, and by common law. The principal business of the Court consists in the administration of *equity*, which is one of the branches of judicial law, or of the law declared, not by Act of Parliament, but by the decisions of judges. The two most important branches of judicial law are, equity and common law. It is very difficult to give such definitions of these two branches of law as shall completely separate them into distinct classes. It is said by Mr. Justice Story in his “Treatise on Equity,” that a court of equity has jurisdiction in cases where a plain, adequate, and complete remedy cannot be had in the common law courts: that the remedy must be plain, for if it be doubtful

and obscure at law, equity will assert a jurisdiction : it must be adequate, for if at law it fall short of what the parties are entitled to, that founds a jurisdiction in equity : and it must be complete, that is, it must attain the full end and justice of the case, and must reach the whole mischief, and secure the whole right of the party present and future, otherwise equity will interpose and give relief.

This description, doubtless, indicates accurately the principal distinctions between equity and common law. It does not, however, appear quite sufficient to say, that equity has jurisdiction where a plain, adequate, and complete remedy, cannot be had at common law : for there are cases in which courts of both equity and common law would be competent to administer justice. In fact, the two jurisdictions are, in some degree, intermingled, and cases occur, in which, according to the opinion of able and experienced lawyers, the required remedy may be sought for either in equity or at common law.

By far the greater number of causes in equity relate in some way to *trusts*. To understand their nature, some slight notice is required of the kinds of property recognised by English laws.

All property is divided into REAL and PERSONAL. The essential characteristics of *real* property are its connection with *land*, and that it is not held for a time certain or at the will of the grantor. Thus an

estate in land for *years* is *personal*; an estate in land for *life* or *lives* is *real*: the duration of the former being predetermined, and of the latter indeterminate. Stock in the funds and moveables not being connected with land are personal. Things which the law regards as connected with land, as houses, peerages, advowsons, and some perpetual offices, constitute real property when held permanently.

Now, in all kinds of property there may be an *equitable* interest, belonging to persons who have not the *legal* possession—that is, such an interest as enables such persons to control the exercise of the rights which the legal estate confers. For example, by a common mortgage of lands and tenements, they are held in pledge as security for return of money or a loan. He who so holds them, the mortgagee, has the legal estate conveyed to him, and if the loan be not repaid within a prescribed period, is regarded at common law as to all intents the owner of them. But equity interposes to control the rights of such ownership, and even after the prescribed period will compel him to reconvey the lands and tenements to the previous owner, on payment of the principal and interest secured. This right of the previous owner to redeem his land is called his *equity of redemption*, for equity gives it to him. And equity alone takes it from him, as upon sufficient grounds the

mortgagee may obtain from a court of equity a *foreclosure*, or termination of the equity of redemption. But so long as it subsists it constitutes an equitable interest, which enables its possessor, as has been said, to control the exercise of the rights which the legal estate confers.

A *trust* may, I think, be defined to be an obligation respecting equitable interests, which is *contemporaneous* with a legal possession. In the case of a mortgage, the equity of redemption and the legal estate of the mortgage are not contemporaneous. The equity of redemption does not arise until after the time prescribed for payment of the money secured has elapsed. For, previously to that time, the previous owner has, at *common law*, a right to redeem. And it is not usual to speak of a mortgage as constituting the mortgagee a trustee. But where land is conveyed to persons by an instrument which simultaneously obliges them to apply the profits to the benefit of women about to be married and their children (for instance), a trust is thereby created. The persons on whom the obligation is imposed are the trustees, and the person for whose benefit it exists the *cestui que trust*. The common law has cognizance of some trusts, as bailments, or fiduciary deposits of moveables; but with respect to other kinds of property, the Court of Chancery has almost sole jurisdiction in regulating and enforcing the execution of trusts.

Trusts are either expressed or implied. Trusts *expressed* by Deed or Will include family settlements just referred to, conveyances by which a debtor makes over his property to trustees to be applied to the payment of his creditors, &c. The object of settlements made previously to marriages, frequently is to avoid the operation of the laws, by which, immediately on marriage, the husband acquires rights to the wife's property, by previously vesting the property in trustees for her benefit.

Implied trusts are such as arise by implication of law or acts of the parties. For instance, executors and administrators of a deceased person are under implied trusts to properly administer his estate, pay debts, and legacies, &c. On his decease his *personal* property passes to his executors (if he appointed any by will), or else (if he died intestate) to his administrators, who are usually certain of his relatives upon such implied trusts. His real property generally passes, where devised by will, to his devisees; where not otherwise devised, to his heirs.

Among other cases of exercise of the jurisdiction of a court of equity are the following. It will relieve from the effects of *accident*, such as where a deed has been lost, and of *mistake*, as where it has been cancelled by error. But in such cases relief will be granted only where such restitution or compensation is made as mutual equity requires. Equity will

similarly relieve against *fraud*, considered as in its *civil* effects ; will order the accounts of *partnership* to be ascertained ; will remove legal impediments to a fair decision of a question, depending at common law, by *restraining* a party from setting up a title inequitably, or by compelling him to *discover* material facts ; will *perpetuate testimony* by taking it in writing, when there is danger of its being lost by death or otherwise. The Court of Chancery will also control *judgments* inequitably obtained at common law by restraining the parties from insisting upon them ; will grant *injunctions* to restrain waste or irreparable injury of property, to restrain *veracious litigation*, and compel *surrender of securities* improperly obtained. The Court will also appoint *receivers* of property which is in danger of being misapplied, prevent persons from leaving the country to avoid a suit, enforce the *specific performance* of contracts, supply defects in the execution of *legal instruments*, and cause them to be *reformed* in accordance with the proved intention of the parties.

Perhaps the simplest view of the general distinctions between the functions of a court of equity and a court of common law, may be derived from the consideration that the latter pronounce judgment for the plaintiff or defendant *simply*, whereas a court of equity *arranges* the differences of litigating parties. A bill praying for relief in equity, after specifying

the special relief which the plaintiffs require, prays also for such further or other relief as to the court may seem fit.

The distinctions between the functions of the courts may be further illustrated, by consideration of the different natures of the machinery (so to speak), by which they severally act. The most usual form of "pleading"* in equity is by *Bill* and *Answer*. The "bill," which is now printed, sets forth the nature of the plaintiff's case, and is required to contain, as concisely as may be, a narrative of the material facts, matters, and circumstances, on which the plaintiff relies. On the principle of doing *complete* justice, which is said to be the peculiar office of courts of equity, all the persons who have interests in the suit are usually necessary parties to it; but by the Act to amend the practice and procedure in Chancery, 15 & 16 Vic., c. 86, it is lawful for the court to adjudicate on questions arising between parties, notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen.

The next proceeding, if an answer to the bill be required, is to deliver to the defendant *interrogatories* or questions concerning the matters of complaint.

* The purpose of "pleading," as will be more fully explained in the next chapter but one, is to define the questions to be tried in any judicial cause.

Unless the defendant can show sufficient reason (by plea, demurrer, or disclaimer) for not answering, he will be required to answer all the interrogatories addressed to him, and his answers may contain statements material to his own case. In a suit commenced by claim or bill, which the defendant is required to answer, he may, after having sufficiently answered, file interrogatories which the plaintiff may be required to answer. Answers must generally be put in upon oath.*

Where a bill is for discovery only, and in some other cases, a sufficient answer by the defendant puts an end to the suit. Where, however, a decree of the Court is necessary, the cause must come on to be heard upon the evidence. If the Court or any of the parties to the bill require it, evidence may be taken orally. Depositions upon oral examination before the examiners of the Court are to be taken down in writing and read over to the witness, who signs them in the presence of the parties attending. In addition to or in lieu of oral evidence, written affidavits by particular witnesses, or as to particular facts, may be used in the hearing of the cause. An affidavit is a statement in writing made without official examination, and verified by the oath and signature of the person making

* Answers in equity combine the characters of evidence and pleading. The common law process has the advantage of keeping pleading and evidence separate.

it. It has been said that "an affidavit does not blush," and certainly grave objections may be often alleged against testimony given not orally but in writing. By such testimony, though it has frequently the advantages of convenience and economy, truth is, in some cases, far less effectually elicited than by oral examination. Affidavits and answers frequently embrace statements so complicated and technical, that even a conscientious person is made by them to give false testimony.

On the hearing of a cause the testimony is usually read from answers, affidavits, and depositions, but occasionally witnesses are examined orally in the Court, which usually determines questions both of fact and law. Where however the former appear doubtful on the evidence, the Court will, for its own information, direct an issue to determine particular facts to be tried at common law.

The *statutory jurisdiction* of the Court of Chancery is that derived from Acts of Parliament. Thus the Court has a power of directing the "winding up" the affairs of joint stock companies, unable to meet their pecuniary engagements. The Court of Chancery has also a jurisdiction by statute with respect to appointment of trustees where trusteeships would otherwise remain vacant; and the moneys, stocks, and securities of trusts may, upon application of a majority of the trustees or executors, be ordered to

be paid or transferred to the Court of Chancery which makes orders on petition (without bill) for the application of the property so paid or transferred. The Court of Chancery has also statutory powers with respect to the investment of the purchase-money where lands in settlement or to which the title is defective are purchased for the purposes of railways, canals, &c.,—the taxation of solicitors' bills, &c. In other cases the protecting and controlling equitable powers of the Court are extended by statutes.

The *delegated* jurisdiction of the Court of Chancery is that which concerns the administration of the estates of idiots and lunatics. This power of administration is conferred by a warrant under the Royal sign manual, directed to some great officer of state—usually the Lord Chancellor, in consideration of its being his duty to issue commissions of lunacy and idiocy.

The *common law* jurisdiction of the Court of Chancery relates chiefly to the nomination, &c. of its own officers, pleas to repeal letters patent, the issuing of certain writs, and other matters which are too technical to require notice here. Among the writs issued by the Court of Chancery are *original writs*, writs of peerages, writs for elections of members of the House of Commons, issued by a Royal command for a general election; by the House itself for supply of vacancies.

The Lord Chancellor is the highest judicial officer in the kingdom ; to him belongs the appointment of justices of the peace ; he is a privy councillor ; visitor in right of the Queen of all Royal hospitals, colleges, and foundations ; patron of all the Queen's livings of the value of 20*l.* or under per annum in the *Liber Regis*, in which in the reign of Henry VIII. were entered the values, since greatly altered, of ecclesiastical benefices and preferments ; is guardian of infants and lunatics, and has general superintendence of charitable trusts.

Lords Justices.—The Act 14 and 15 Vic., c. 83, directs the appointment of two judges of the Court of Appeal in Chancery, who are styled Lords Justices, and have the same jurisdiction and powers in Chancery as the Lord Chancellor, saving certain of his ministerial powers, as those relating to the custody of lunatics, revocation of letters patent, visitation of charities, &c. The Court of Appeal hears appeals from inferior Courts of Chancery and Courts of Bankruptcy, and has certain other powers in bankruptcy. The decrees of the Court of Appeal are subject, with some restrictions as to decrees in bankruptcy, to appeal to the House of Lords. The jurisdiction of the Court of Appeal may be exercised by either of the Lords Justices sitting with the Lord Chancellor, or by the two Lords Justices sitting apart from him, or the Lord Chancellor sitting alone. If

the opinions of this Court be equally divided on an appeal, the decree or order appealed from is taken to be affirmed.

The greater part of the causes heard before the Lord Chancellor and the Lords Justices are appeals in Chancery suits first brought before the Master of the Rolls and the Vice-Chancellors, to whose Courts original causes in Chancery are generally confined.

The *Master of the Rolls* has an original jurisdiction in Chancery, and orders and decrees made by him, except such as are appropriated to the Great Seal alone, are valid, but are subject to be discharged or altered on appeal, and are not enrolled till signed by the Lord Chancellor. The Master of the Rolls is the only one of the judges who can sit in the House of Commons, but the exception respecting him is not the result of any peculiarity of judicial or executive functions, requiring of him parliamentary duties not required of other judges. His office is not political, but held during good behaviour.

Besides his judicial functions, the Master of the Rolls has the custody of the public records of this kingdom. There are several public offices, in which are deposited invaluable collections of ancient documents, authentically recording the proceedings of the Parliament, Courts of Law, and several branches of the national Government ; and of these record-offices,

which it is purposed to consolidate in one, the Master of the Rolls is the head.

The three *Vice-Chancellors* have separate Courts, in which are heard causes submitted to the jurisdiction of the Lord Chancellor. In consequence of the increase of the business of the Court of Chancery, and the transfer to it of the equitable jurisdiction of the Court of Exchequer, the Vice-Chancellors have been appointed to assist in the discharge of the judicial functions of the Lord Chancellor, and almost all original causes submitted to his jurisdiction are now heard by one or other of them. A Vice-Chancellor hears and determines causes and matters in Chancery as the Lord Chancellor may from time to time direct; but a Vice-Chancellor generally may not alter or reverse in his Court the decisions of other Courts of Equity.

CHAPTER XXIII.

THE SUPERIOR COURTS OF COMMON LAW.

THE chief judicial administration of the common law of England is assigned to the judges of the three Courts of Westminster, the Queen's Bench, the Common Pleas, and the Exchequer, of which the jurisdictions are now, in a great measure, alike, though altogether different originally. The Court of Queen's Bench is a remnant of the *aula regia*, or great universal court, which William the Conqueror established to be held in his own hall, and which was bound to follow the king's household in all his progresses and expeditions. The Court of Queen's Bench is not, therefore, necessarily stationary, and processes issuing out of it in the Queen's name, are returnable, *ubicunque fuerimus in Angliâ*; though this Court has, for centuries, usually sat at Westminster. The Common Pleas, however, is necessarily fixed to one place—according to the provision of *Magna Charta*—*communia placita non sequantur*

curiam regis sed teneantur in aliquo loco certo. The Court of Exchequer was originally a part of the *aula regia*, and its business was confined to order the revenue of the Crown, and to recover the king's debts and duties. By means of legal fictions, however, the Queen's Bench and Exchequer contrived to obtain for themselves a share in the jurisdiction of common pleas or common law suits between subjects, for trial, of which, exclusively, the Court of Common Pleas was originally appointed; and now in all personal actions, as well as in actions of ejectment, the three superior Courts possess equal jurisdiction; but the cognizance of the only "real" actions remaining (which relate to widows' dower and ecclesiastical patronage), is in the Common Pleas exclusively. An action of detinue of charters savours of the realty, and can properly be brought there only.

The judges of the three Courts are now fifteen in number. By the Act 1 Will. IV., c. 70, it was declared to be expedient that an additional puisne judge should be appointed of each of the Courts. There are now in each a chief and four puisne or junior judges. The judges of the Queen's Bench and Common Pleas are styled *the Justices of either Bench*. The judges of the Exchequer are styled *Barons*. The puisne judges sit by rotation or as they may agree, so that not more than *three* of them sit at the same time in banco, unless in the absence of the chief judge.

The remaining judge may sit apart for the transaction of incidental business of the Court, relating to special bail, statutory declarations, &c.

The judges of the three Courts, in addition to their duties in their several Courts at Westminster, periodically make circuits through England and Wales for the administration of justice, as will be more particularly mentioned hereafter. The judges are always in the commission of the peace for every county. They are appointed by the Crown, hold their offices during good behaviour, are removable only upon the address of both Houses of Parliament, and continue in office notwithstanding the demise of the Crown. The judges thus hold their offices by a tenure which renders them independent of political or Court influence in the discharge of their judicial functions.

The Court of Queen's Bench is the supreme Court of Common Law in this kingdom, and consists of a Lord Chief Justice and four puisne justices, who are, by their office, the sovereign conservators of the peace, and supreme coroners of the land. This Court has authority over all the inferior courts of common law, to keep them within the bounds of their authority, and to remove their proceedings to be determined in the Queen's Bench, or to prohibit their further progress. The Court of Queen's Bench commands the magistrates to do what their duty requires in cases

where there is no specific remedy, superintends civil corporations, grants writs of *mandamus*, and *quo warranto*, of which the nature will be explained hereafter ; and in common with the other superior common law courts, and the Court of Chancery, has power to issue the writ of *habeas corpus*.

The jurisdiction of the Court of Queen's Bench is divided into two parts—the Crown side or Crown office, and the Plea side—which take cognizance of criminal and civil causes respectively. On the *Crown side*, the Court of Queen's Bench, which has always exercised a supreme original jurisdiction in all kinds of criminal causes, from high treason to the most trivial breach of the peace, has power to remove indictments from all inferior Courts, to be tried either "at bar" or at *nisi prius*. Indictments removed by the Court, to be tried at *nisi prius*, are heard before a jury of the county, out of which the indictment is removed.

On its plea-side the Court of Queen's Bench holds pleas of all civil actions, except those which are actions *real*. In all personal actions, which are subject to the jurisdiction of the Courts of Westminster, as has been said, the suitor has now usually the option of proceeding in either of them indifferently. Criminal informations are filed in the Queen's Bench *ex officio* for the purposes hereafter mentioned.

The Court of Common Pleas now has the same jurisdiction as the Court of Queen's Bench in personal actions, has no criminal jurisdiction, and has exclusive jurisdiction to hear and determine pleas of land. "Real" actions, are brought in the Common Pleas alone; but ejectment, which is partly of the nature of a personal, and partly of a real action, may be brought in any of the superior common law courts. From the decisions of revising barristers, respecting parliamentary suffrage, an appeal lies to the Court of Common Pleas only. This Court consists of a chief justice and four puisne judges.

The Court of Exchequer was anciently a court of record for trying causes affecting the revenue and rights of the Crown, and derived its name, *scaccharium*, from the chequered table-cloth, resembling a chessboard, on which, when the Royal accounts were made up, the sums were marked and scored with counters. The Exchequer consists of two divisions—the judicial side—and the receipt of Exchequer, a department of the administrative government to be noticed hereafter. The judicial jurisdiction of the Court of Exchequer, besides that which it has in personal actions in common with the other Courts of Westminster, relates to penalties recoverable for offences against various fiscal laws and frauds upon the revenue.

The Court of Exchequer comprises a chief baron and four puisne barons. Anciently, the causes of this Court were heard before the Lord High Treasurer and Chancellor of the Exchequer, with the barons; and the Chancellor of Exchequer still holds the seal of the Court, and attends it on certain formal occasions.

The Court of Exchequer Chamber is a court of appeal from the three Courts of Westminster. Judgments of either of them may be revised before the judges of the other two Courts sitting as a Court of Error in the Exchequer Chamber; causes of Error upon judgments of either of the three Courts being brought before the judges (or judges and barons as the case may be), of the other two courts in the Exchequer Chamber (1 Will. IV., c. 70). The Common Law Procedure Act, 1852, abolished writs of error, and substituted simpler forms of procedure.

Appeal in criminal cases.—By an Act of 1848,* a Court of Appeal is constituted for deciding difficult questions, which may arise in criminal trials at assizes or quarter sessions.† Where any person has been convicted of treason, felony, or misdemeanour, and such question has arisen on his trial, execution of judgment may be respited by the Court or judge

* 11 & 12 Vic. c. 78.

† “Criminal Trials in any Court of Oyer and Terminer, or Gaol Delivery, or Quarter Sessions.” These words include the court of a recorder of a borough. 1 Den. c.c. 332.

giving it, and the question reserved for the consideration of the justices of either bench and barons of the Exchequer. These have full power to determine such question, and to reverse, affirm, or amend any judgment given on the indictment or inquisition. The authorities given by this Act to the fifteen judges are to be exercised by five of them at least, among whom must be one, at least, of the Chief Judges; and their judgments are delivered in open Court, after hearing counsel or the parties.

CHAPTER XXIV.

TRIAL OF ACTIONS AT LAW.

THE distinctions between the common law and equity, already noticed, are illustrated by the differences of procedure in the Courts exercising these two branches of civil jurisdiction. It may be interesting even to a general reader, and certainly is essential to an accurate knowledge of the English constitution, to be in some measure acquainted with the distinctions between the pleadings in equity and at common law.

It will be at once obvious that it is essential to the satisfactory adjudication of every dispute, that the tribunal, *before* hearing the cause, be distinctly informed of the nature of the questions between the parties to it. Otherwise the cause would be confined within no certain limits, and the time of the Court might be occupied, and its attention distracted by endless and vague recriminations and altercations. Accordingly no rule is more palpably necessary than

that adopted in the Courts both of law and equity—to strictly confine the parties, at the hearing of the cause, to the discussion of the questions previously put in issue between them, and to restrain them from travelling “out of the record” into any question which they have not raised by the pleadings previously to coming before the Court. On one thing at least the parties must be agreed—namely, the nature of the questions they would have tried between them. The methods pursued to bring them to this sort of agreement are entirely different at equity and common law; but in both the preliminary proceeding for the purpose is “pleading.”

The pleadings, by which the questions of a Chancery suit are defined, are, as I have already said, generally by Bill and Answer. The plaintiffs state their case in their bill, and found on it questions (interrogatories) which the defendants are generally bound to answer. In making their answer the defendants may state their case, and in turn found on it questions to be answered by the plaintiffs. The plaintiffs may amend their bill, if from the defendants' answer it appears necessary to do so. When the pleadings are deemed sufficient to disclose the contention between the parties, issue is joined upon them generally, and the parties proceed to take evidence and to a hearing of the cause.

At common law nothing of this process of mutual

interrogation and answer exists. This process may have the effect of raising, not one, but several questions between the parties, which the Court of Chancery has to settle by a method of *adjustment*, already noticed as a peculiar characteristic of that Court. In a trial at common law such a general adjustment of differences is not contemplated, and consequently it is important to reduce the questions in dispute to *single* issues. This is effected by an altogether different process—and a most ingenious and logical one—of statement and counter-statement, by which the dispute by successive admissions becomes narrower at every stage of the pleadings, till at last it is reduced to single and direct issues between the parties.

The pleadings at common law commence by the delivery to the opposite party of the plaintiff's *declaration*, or written statement of the *venue*, that is, the county in which it is purposed that the trial should take place, the names of the plaintiff and his attorney (unless he sue in person), and of the defendant, the cause of action, the sum of money claimed—or if the action be brought to recover goods, a claim of the goods or their value, and a specified sum for their detention.

In local actions, which relate to real estate, the county in which the subject matter is situated, if it be situated in one county, is the proper venue, unless the Court or a judge otherwise direct. Where

two or more causes of action are joined which are local, and arise in different counties, the venue may be laid in either ; but the Court or judge has the discretion of ordering separate trials. In personal actions, such as actions of debt, contract, or personal injuries, the plaintiff may bring his action in whatever county he please ; but in all causes, local as well as personal, the judges have authority to change the venue on application to them for that purpose.

The defendant's reply is called his *plea*. Pleas are of various kinds, and consist of allegations denying those of the plaintiff or his right of action, objecting to the jurisdiction of the Court, or that the time limited by law for bringing the action has elapsed, pleading tender or payment, set off, &c.

Wherever the plea does not amount to a total contradiction of the plaintiff's declaration, he may reply by his *replication*. Again, wherever this does not amount to a total contradiction of the defendant's plea, he may rejoin and so on alternately. But the alternations are in practice few, for every plea is required to be simple and distinct, and the rules of pleadings are arranged so that the matters in dispute may be reduced speedily to direct contradictions between the parties by means of the alternate allegations ; whereupon the cause is said to be brought to an *issue*, and is in a fit state to be tried. An *issue*, being an end of all the pleadings, is either upon matters of law or matter of fact. The former kind of

issue is called a *demurrer*, which *confesses* facts alleged by the opposite party, but denying their sufficiency in law, prays judgment of the Court thereon. This issue in law the full Court, that is, not more than four of the five judges of the Court, determine; but if the issue be of fact, it is most frequently decided before one judge by a jury in the manner hereafter mentioned.

By the Common Law Procedure Act of 1852, questions of law or of fact may be tried by consent of the parties without pleading. Wherever the parties to an action are agreed as to a question of fact, to be decided between them, they may after writ issued and before judgment proceed to trial without pleadings, upon consent and by order made by a judge on being satisfied that the parties have a *bonâ fide* interest in the decision of the question, and that it is a fit one to be tried. They may also agree for the payment of a sum stipulated by them, or to be ascertained by the jury according to the result of the issue. In like manner they may raise questions of law, without pleadings, for the opinion of the Court, and make the payment by one of the parties to the other of a sum fixed by them, or to be ascertained by the Court, depend upon the judgment.- In case no agreement be entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party.

Fictitious and needless averments are to be omitted

in pleadings. Each party may object by demurrer to the pleadings of the opposite party, on the ground that it does not set forth sufficient ground of action, defence, or reply. Where issue is joined on such demurrer, the Court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them. No judgment shall be arrested, stayed, or reversed for imperfection, omission, defect in, or lack of form.

It is lawful for defendants in all actions except actions for assault and battery, false imprisonment, libel, slander, malicious arrest, or prosecution, criminal conversation, or debauching the plaintiff's daughter, or servant (by leave of the Court or a judge in the case of one or more of several defendants) to pay into Court a sum of money by way of compensation or amends. The plaintiff may then accept such sum in full satisfaction, or reply that it is insufficient. If the defendant join issue thereon, and that issue be found for him, he shall be entitled to judgment and his costs of the suit.

CHAPTER XXV.

WRITS ISSUED JUDICIALLY.

AN important branch of the functions of the courts of law is the issue of Writs. The writs of *Habeas Corpus*, *Mandamus*, *Quo Warranto*, *Prohibition*, and *Certiorari*, are of great constitutional importance, and indicate, with remarkable clearness, the spirit of English laws. A general knowledge of the nature of these writs affords an interesting view of the provisions of the constitution for protection of liberty, and for regularity in the exercise of functions of justice.

A writ, in its original signification, is a Royal writing, whereby some right, privilege, or act is authorized. Writs are either patent (*literæ patentes*) directed "to all to whom these presents shall come," and have the Great Seal attached to them, or are close (*literæ clausæ*) directed to particular persons, and supposed to be sealed up. Among those of the latter kind are all writs issued judicially for the administration of justice. These are issued in the

Queen's name out of Chancery, or by the judges of the superior courts of Common Law. Such writs are either demandable of common right—as those by which civil suits commence; or are *Prerogative* writs (as Habeas Corpus, Certiorari, Prohibition, and Mandamus), “which do not issue of mere course without showing some probable cause why the extraordinary power of the Crown is called to the party's assistance.”*

The most important of such writs is that of *Habeas Corpus*. The Act 16 Car I., c. 10, provides that, if any person be committed by the king himself in person, or by his Privy Council, or by any member thereof, he shall have granted unto him, without any delay upon any pretence whatsoever, a writ of *habeas corpus* upon demand or motion made to the Court of King's Bench or Common Pleas, which shall, thereupon, within three days after the return is made, examine and determine the legality of such commitment, and do what to justice shall appertain in delivering, bailing, or remanding such prisoner.

The famous Habeas Corpus Act, 31 Charles II., c. 2, provided for the relief of persons committed for criminal or supposed criminal matters in cases where by law they ought to be bailed. The Lord Chancellor, or any of the judges of the superior courts of law, upon viewing a copy of the warrant, or affidavit

* 3, Blackstone's Commentaries, c. 8.

that a copy is denied, shall (unless the party has neglected for two terms to apply to any Court for his enlargement) award a writ of *habeas corpus* for such prisoner returnable immediately before himself or any other of the judges, and upon the return made, shall discharge the prisoner, if bailable, upon his giving security to appear and answer to the accusation in the proper court of judicature. The Writ shall be returned, and the prisoner brought up within a time limited according to distance, not exceeding twenty days. No person once delivered by *habeas corpus* shall be recommitted for the same offence. Every person committed for treason or felony shall, if he require it, be indicted in the next term or session, or else on the last day of it be admitted to bail, except the king's witnesses cannot be produced at that time : also if the person so committed be acquitted, or if he be not indicted and tried in the second term or session, he shall be discharged from his imprisonment for such imputed offence. No person, however, after the assizes shall be opened for the county in which he is detained, shall be removed by *habeas corpus*, but shall be left to the justice of the judges of the assize. The Act imposes severe penalties for disobedience to its provisions.

The Writs of *Habeas Corpus* were originated, not by statutes, but by the common law. There have been several ancient writs of *habeas corpus* at common law

for different purposes, but the Writ referred to in the statutes above mentioned, is the *habeas corpus ad subjiciendum* directed to a person detaining another, and requiring him to *produce the body* of the prisoner, and state the day and cause of his caption and detention *ad faciendum, subjiciendum, et recipiendum*—to do, submit to, and receive whatsoever the judge or Court awarding such Writ shall consider in that behalf. The legislature has subsequently extended* the remedies of *habeas corpus* to all persons restrained of their liberty except for criminal matters, debt, and civil process.

In times of great political excitement the operation of the *habeas corpus* has been sometimes suspended by Act of Parliament, so that persons committed lose the protection it affords, which enables them to be bailed, tried, or discharged. But as this mere suspension does not relieve committing magistrates from future responsibility for illegally imprisoning, it has been usual to pass a subsequent Act of indemnity, for the purpose of protecting them in actions of false imprisonment, from which they could not defend themselves without making disclosures of the authority or information on which they acted. The jealous regard of Parliament for the rights of personal liberty is the national protection against such exceptional enactments being unduly passed.

* By 53 Geo. III., c. 100.

Writs of *Mandamus* are of the nature of commands in the Queen's name, issued from the Court of Queen's Bench, and command persons, corporations, and inferior tribunals to perform particular acts specified. Among the most important purposes of a *mandamus*, is that of commanding judges of any inferior Court to do justice according to the powers of their office. The Court of Queen's Bench thus exercises its authority to superintend all inferior tribunals, and to enforce their due exercise of the judicial and ministerial functions which they have by law. Writs of *mandamus* are issued, however, for many other purposes, as to command restitution of a man to public office, from which he has been wrongfully amoved, or his admission to a public office to which he has been duly elected—to oblige corporations to affix their seal to legal instruments—or to pay poor rates where they have not sufficient distrainable property,—or to permit inspection of documents—to parochial authorities to assemble vestries—to the visitor of an eleemosynary foundation to hear an appeal—to a university to restore a graduate to degrees from which he has been suspended, &c.

The Writ of *Mandamus* is applied for upon the affidavits of applicants or others, stating the circumstances upon which the claim to remedy, by means of the Writ, is founded. Excepting a few cases of manifest ground of interference by the Court, the

writ is not, in the first instance, granted absolutely, but the Court, if satisfied that there is a probable case for its interference, grants a rule, calling upon the opposite party to *show cause*, at an appointed time, why the writ should not be issued. If at the appointed time the party, by insisting on the insufficiency of the facts appearing on the affidavits, or by further affidavits show sufficient cause, the rule is discharged. But if sufficient cause be not shown the writ is issued. It is, in the first instance, in an *alternative* form, requiring him to whom it is directed, to do a particular act, or show why he has not done it. The *return* to the writ must be made by a certain day. If the return allege insufficient reasons for not doing the act required, there issues, in the second place, a *peremptory mandamus*, to which no other return will be admitted, but a certificate of obedience to, and due execution of, the writ.

Prohibition is a writ to prohibit a Court and parties to a depending cause from proceeding further therein. Writs of prohibition may be granted by any of the three Common Law Courts and by some other tribunals. Such writs may be issued to the Ecclesiastical, Admiralty, and Inferior Courts, and probably to the Courts of Exchequer and Common Pleas, but not to the Court of Queen's Bench, or the Court of Chancery. The writ is grantable in cases where a Court entertains matters not within its jurisdiction, or

proceeds in a cause in a manner not recognised by law.

Quo warranto is a remedy given against such as have usurped, misused, or neglected any office or franchise. This writ requires the defendant to show by *what warrant* he exercises a franchise, having never had a grant of it, or having forfeited it by neglect or abuse. By information filed in the Court of Queen's Bench by the Attorney-general, in the nature of a writ of *quo warranto*, the right to possess an office is tried, and by statute 9 Anne, c. 20, such an information may be brought by leave of the Court at the relation of any person desiring to prosecute the same (who is styled the *relator*) against any person unlawfully holding any franchise or office in any city, borough, or town corporate. By 6 and 7 Vic, c. 89, it is provided with respect to the elections of mayors and corporate officers of boroughs, of which the constitutions are specified in the Municipal Corporations Act of 1835, or subsequently chartered under the provisions of that Act, and the Amendment Act, 1 Vic, c. 78, that such election is to be valid unless called in question by *quo warranto* within twelve months from the election. The Act 32 Geo. III., c. 58, had previously provided that exercise of any office or franchise in any city, borough, or town corporate for six years should exempt from removal by *quo warranto*.

Certiorari is an original writ issued out of Chan-

cery and the three Common Law Courts, directed to the judges of Courts, commanding them to return the record of a cause, or matter depending before them, in order that it may be determined by another tribunal. When an indictment of a lord of Parliament for treason or murder, or misprision of either, is found by a grand jury, the cause is to be removed into the Court of the Lord High Steward in the House of Lords. But a more frequent purpose of the writ of *certiorari* is the removal of a cause from an inferior tribunal, in order that it may be tried in one of the superior courts. In this manner convictions by magistrates, and judgments, and orders of quarter sessions are subject to appeal in the Queen's Bench. In the same way indictments may be removed before actual trial at the assizes.

When it is considered how numerous are the local Courts, and how various their constitution is, it will be seen that the supervision thus exercised by means of writs is a most important provision for securing regularity and uniformity in administration of justice.

CHAPTER XXVI.

CRIMINAL TRIALS AT COMMON LAW.

CRIMES, according to English law, are divisible into two classes :—

1. Such as are punishable on *summary* conviction before justices of the peace, or other authorized persons, without *trial by jury*.

2. Such as are not dealt with summarily, but are tried by Juries.

The summary criminal process relates to minor offences, and is almost entirely regulated by Acts of Parliament. The procedure with respect to the second class of offences is derived principally from the common law, and is to be considered in this place.

Criminal process by common law commences by either *summons* or *arrest* of the accused. Every person is liable to arrest who is charged with a bailable or greater offence. A warrant for arrest (usually issued by justices of the peace) requires the constable or peace officer to bring the accused before the justice

who grants the warrant (if it be a special warrant), or before any justice of the county. A *general* warrant which directs an arrest of persons suspected of specified crimes, and which does not name the person to be arrested, is *illegal*. A warrant of the Queen's Bench extends over all England, but a warrant of a justice of one county must be signed by the justice of another before it can be executed in the latter. Certain officers, as a justice, sheriff, coroner, constable, or watchman, may, in some cases, arrest without warrant.

Upon an accused person appearing before a justice, he is bound to inquire forthwith into the circumstances of the accusation, and to take the evidence in writing, as also any explanation the accused may offer, but he is usually cautioned by the justice not to criminate himself. If the charge appear *prima facie* to be made on good grounds, and does not constitute a case for summary conviction, the prisoner is either *committed* to prison for trial or admitted to bail. Where the charge is one of felony the accused, if brought before one justice, may be detained until the case be heard before two justices at least. When held to bail or committed to prison, the accused is entitled to copies of the examination of the witnesses. A coroner before whom on inquest a person is found guilty of murder or homicide, must commit him for trial.

The prosecution or formal accusation of criminal offenders is either—1. Upon the previous finding of

a grand jury ; or—2. By criminal information without such previous finding.

1. Grand Juries are in criminal courts only, and each of them is sworn to inquire for one county, *pro corpore comitatûs*. The accusations which are remitted by grand juries to be tried by petty juries, are either by *presentment*, *inquisition*, or *indictment*. “A presentment,” says Blackstone,* “properly speaking, is the notice taken by a grand jury of any offence from *their own* knowledge or observation without any bill of indictment.” In this way the grand jury may present cases of nuisance which have fallen under their own observation, and an indictment must be framed upon such presentment.† Coroners’ inquisitions, on which persons are found guilty of homicide, must also be “presented,” or noticed by the grand jury. But the most frequent way in which the office of a grand jury is exercised, is by the examination of *indictments*.

An indictment is a written accusation of one or more persons of crime or misdemeanour *preferred* to, and *presented* by, a grand jury.

The grand jury are previously instructed in the articles of their inquiry by a charge from the judge, who presides upon the bench. They then withdraw

* Commentaries, IV. Chap. xxiii

† Grand Juries also notice by presentment defects of County Bridges, &c. See Chap. XXXV.

to consider indictments which are preferred to them in the name of the Crown, but may be at the suit of any private prosecutor. The proceedings before the grand jury are entirely *ex parte*. The grand jury hear only evidence for the prosecution, and determine whether there be sufficient evidence to call upon the accused to answer it upon trial. In the common cases of felony and misdemeanour, the clerk of the indictments prepares the indictments from depositions taken by the committing magistrates; but sometimes the indictment is framed by a barrister or ordinary draftsman, and merely passed by the Crown draftsman.

On the back of the indictments are written the names of the witnesses for the prosecution; when the grand jury have heard the evidence, they either ignore* the bill by writing on it "not a true bill," or, "not found," whereupon the accused is discharged—or endorse, "a true bill," whereupon the accused stands indicted.

2. A prosecution may, in some cases, be founded on a criminal information without the previous finding of a grand jury. A *criminal information*, as has been already mentioned, is either in the name of the Queen, or jointly at the suit of the Queen and a subject. A criminal information in the name of the Queen, filed *ex officio* on the record, is a suggestion by the Attorney-general, Solicitor-general, Queen's

* Formerly by writing the word *ignoramus* on the bill.

coroner, or master of the Crown Office, and generally relates to offences against the State or municipal government. Criminal informations are also filed by the master of the Crown Office at the relation of a private subject, and relate to notorious misdemeanours, or more frequently are filed by informers, for the sake of recovering penalties imposed by various penal statutes. The Court of Queen's Bench exercises a discretion in granting or refusing leave to file such informations, and will grant them only on affidavits, showing circumstances of sufficient importance to justify a criminal information. After information filed, the proceedings are, in general, the same as after indictment found for misdemeanour.

The next step after information or finding by the grand jury, is *Arraignment*, or the calling on the accused to answer the charge against him. Thereupon, in cases of felony or misdemeanour, he may either confess the charge to be true, or may *plead* or *demur*. The distinction between pleading and demurring is similar to that already noticed with respect to civil process. By pleading the accused puts the facts in issue; by demurring he admits them, but contends that they are not indictable by law, or that the law has not recognized the offence charged as an indictable offence. However, if the demurrer be disallowed, he may plead over "not guilty." Pleas may be made either to the *jurisdiction* of the Court; or in *abate-*

ment—as for misnaming him—whereupon the Court may order the indictment to be amended ; or in *law* by special pleas in bar, as of previous acquittal, conviction, attainder, or pardon of the same offence ; or, which is by far the most frequent course, the plea may be the *general issue* “ *not guilty*.”

When the accused has thus put in issue of the whole question of his guilt or innocence, that issue is determined by trial by jury in the manner hereafter mentioned. When a verdict of guilty has been returned by a jury against a prisoner, the Court, except in cases of prosecutions pending in the Court of Queen’s Bench, may at once proceed to pass sentence upon him, unless he allege something sufficient in law to arrest or bar judgment. In prosecutions pending in the Queen’s Bench, four days are allowed for moving an arrest of judgment. Judgment may be arrested by the prisoner being pardoned after arraignment, or becoming insane after conviction, or for material defect in the trial. If judgment be arrested, all the proceedings are set aside, but the accused may, in certain cases, be prosecuted again.

A *reprieve* is a temporary suspension of punishment. *Pardon* is a Royal prerogative, and may be granted generally in criminal cases, but not in civil cases. Pardon cannot be pleaded to parliamentary impeachments, nor for offences against penal statutes, where the informer has acquired a private

right to his share of the penalty. Pardon may be either absolute or conditional, as where one punishment is commuted for a less. The prerogative of pardon is exercised on the recommendation of the Secretary of State for the Home Department, and most usually upon memorial or certificate transmitted to him by the judge who pronounced the sentence.

CHAPTER XXVII.

TRIAL BY JURY.

A JURY is an assembly of persons who are authorized by law, and solemnly bind themselves to determine faithfully matters of fact only. Juries may be divided into those which try issues of fact, and those which determine facts not put in issue. To the latter class belong juries of inquisitions of lunacy and of coroners, juries of matrons *de ventre inspiciendo*, *pix* juries which assay the coinage, and grand juries whose functions have been mentioned in the last chapter. Juries which try *issues* of fact between plaintiff and defendant, accuser and accused, are:—1. Petty or common juries; 2. Special juries.

1. Every person (with certain exceptions mentioned hereafter) between the ages of twenty-one and sixty years, who has, within the county in which he resides 10*l.* a-year in freehold lands or rents, or 20*l.* a-year in leaseholds for unexpired terms of at least twenty-one years, or who, being a householder, is

rated to the poor rate in Middlesex on a value of not less than 30*l.*, or in any other county, of not less than 20*l.*, or who occupies a house containing not less than fifteen windows, is qualified and liable to serve on juries in the superior Courts of Westminster, and the Courts of the counties palatine, for the trial of issues to be tried in the county where he resides, and also to serve on Grand Juries at the sessions of the peace and on Petty Juries for the trial of issues triable in the county in which he resides.

Persons exempt from serving on all juries and inquests are peers, judges, practising barristers, and solicitors, &c., coroners, gaolers, keepers of houses of correction, clergymen in holy orders, Roman Catholic priests, dissenting ministers whose places of worship are registered and who follow no secular occupation but that of schoolmaster, metropolitan police magistrates, officers in the army and navy on full pay, physicians, surgeons, and apothecaries duly licensed and actually practising, servants of the Royal household, pilots licensed, and masters in the buoy and light service, officers in the customs, post-office, and excise, officers of courts of justice actually exercising their offices, sheriffs' officers, high constables, parish clerks, members of the House of Commons while attending Parliament, and some others.

None but a natural born subject may serve on juries or inquests except on trial of aliens, nor may

any criminal convict of any infamous crime, unless he have obtained a free pardon, nor any under sentence of outlawry or excommunication. Justices may not serve on juries at sessions within their jurisdiction.

Judges may direct the sheriffs to summon jurors to attend the assizes of their respective circuits, to serve indiscriminately on civil and criminal trials. Jurors may be fined for non-attendance.

When a cause is called on, twelve of the jurors, whose names are indicated by tickets first drawn from a box containing all such tickets, constitute the jury. *Challenge* or objection to a jury is of two kinds—challenge to the *array*, where the whole list of jurors is objected to on the ground of irregularity or partiality in summoning them—challenge to the *polls*, where particular jurors are objected to for disqualification or for partiality. The cause of such objection must in each case be shown, except that in trials for treason, the accused may challenge peremptorily, that is, without assigning a cause, thirty-five jurors, and in trials for felony twenty jurors; and that where the challenge is on the part of the Crown, cause need not be shown unless a full jury cannot be found without the persons objected to. In practice challenge is seldom resorted to, as on private suggestion to the officer who calls the jury in court, the name objected to will be usually passed over.

2. *Special Juries* may be required for the trial of any cause (except of treason or felony), by either party to the cause, on payment, however, of extra fees, unless the judge certify that the cause required such a jury. Special jurors are presumed, by their station in society, better qualified than common jurors to try difficult questions. Every man described in the jurors' book as esquire, or person of high degree, or as a banker, or merchant, is qualified to serve on special juries. The jury is selected from a number of jurors whose names are indicated on tickets drawn at random from a box.

On trial at common law by jury the case is opened before them and one judge, by the plaintiff or prosecutor, or his counsel (when, as is usual, such counsel is engaged), who states the nature of the cause, and of the evidence by which it is to be supported. This evidence is then adduced, the witnesses who give it being examined, first by the plaintiff or prosecutor, or his counsel, and then *cross-examined* for the defendant or prisoner. Questions are also put to the witnesses by the judge, on whom, in the absence of the prosecutor in criminal cases, the examination of witnesses for the prosecution devolves.

When the evidence for the plaintiff or prosecutor is concluded, the defendant or accused replies personally or by counsel. If witnesses be then called for the defence, the plaintiff may reply, but not

otherwise. The judge then *sums up* the whole case, directing the attention of the jury to the facts most material for their consideration, and informing them as to legal or other difficulties which the case may involve. If the judge misdirect the jury on any point relating to the admission of evidence, or to a matter of law on fact not denied, counsel may tender a bill of exceptions to that part of his summing up, and thereupon error is brought on the judgment, and the matter carried into the Exchequer Chamber.

New evidence may not be given after the jury have retired to consider their verdict, but a witness may (if requisite) be recalled to repeat his evidence in open Court. In a protracted trial, the Court may permit the jury to separate and return, but not after the judge has summed up. In criminal causes the Court may adjourn from one day to the next, but the jury must be kept together, that they may have no communication except with each other respecting the cause. In cases of felony they are permitted to retire under the charge of the sheriff or his officers, who are sworn to keep them together, and not to speak to them on matters relating to the trial. The jurors, in cases of misdemeanour, will be permitted to retire to their own homes, on engaging not to allow themselves to be spoken to on the subject of the trial. The judge has power to discharge a jury if

they cannot agree in their verdict, or if a material witness be absent.

The *verdict* or finding of the jury is, in England, required to be *unanimous*, and publicly delivered in Court. The verdict may be general or special. A general verdict is absolutely for the plaintiff or defendant, both as to questions of law and questions of fact. A special verdict specifies the facts found by the jury to be proved. The jury may also assess *damages* in civil cases, or the sum of money to which the plaintiff is entitled, by way of compensation, from the defendant for the wrong found to have been sustained.

The verdict may be set aside, and a *new trial* granted, on the grounds of error of the jury or misdirection of the judge, exorbitant damages, irregularity of proceedings, and similar reasons. The granting a new trial in one of the supreme Courts of law, may be determined by the full Court, that is, by not more than four of the five judges of whom, as has been mentioned, each of those Courts consists.

The constitutional importance of trial by jury is well shown by M. De Lolme in the following judicious reflections upon it.* “By means of it the judicial authority is not only placed out of the hands of the man who is invested with executive authority—it is even out of the hands of the judge himself. Not only

* Constitution of England, Book I. Chap. xiii.

the person who is entrusted with the public power, cannot exert it till he has, as it were, received permission for that purpose of those who are set apart to administer the laws; but these latter are also restrained in a manner exactly alike, and cannot make the law speak but when in their turn they have likewise received permission.

“And those persons to whom the law has thus exclusively delegated the prerogative of deciding that a punishment is to be inflicted—those men, without whose declaration the executive and judicial powers are both thus bound down to inaction, do not form among themselves a permanent body, who may have had time to promote their private views or interests; they are men selected at once from the people, who perhaps never were before called to the exercise of such a function, nor foresee that they ever shall be called to it again.

“As the extensive right of challenge effectually baffles, on the one hand, the secret practices of such as, in the face of so many discouragements, might still endeavour to make the judicial power subservient to their own views; and on the other excludes all personal resentments, the sole affection which remains to influence the integrity of those who alone are entitled to put the public power into action, during the short period of their authority, is that their own fate as

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subjects is essentially connected with that of the men whose doom they are going to decide.

“In fine, such is the happy nature of this institution that the judicial power, a power so formidable in itself, which is to dispose, without finding any resistance, of the property, honour, and life of individuals, and which, whatever precautions may be taken to restrain it, must in a great degree remain arbitrary, may be said in England to exist, to accomplish every intended purpose, and to be in the hands of nobody.”

CHAPTER XXVIII.

COURTS OF LOCAL JURISDICTION.

HITHERTO we have considered the Courts which have general jurisdiction throughout England and Wales. We come now to the consideration of the Courts of less extensive jurisdiction. The administration of equity in England and Wales is almost confined to the Court of Chancery ; but for the administration of common law there are besides, the Courts of Westminster having general jurisdiction, several local Courts. The local administration of the common law is assigned in important causes, criminal and civil, to the JUDGES OF ASSIZE. The tribunals for hearing minor causes are (1) those of *counties*, (2) those of *boroughs*. In counties minor criminal causes are determined chiefly at Quarter Sessions, and minor civil causes in the County Courts. For minor criminal offences in boroughs, Borough Courts and Quarter Sessions are usually held.

For the administration of ecclesiastical law and the

laws relating to bankruptcy, the country is divided into other districts as will be hereafter explained.

Assizes.—The inconvenience of resort by suitors from distant parts of the country to the central Courts for justice, at a very early period led to the expedient of appointing justices in eyre, or itinerant justices, to hear civil and criminal causes in the different counties successively. In addition to these itinerant Courts which determined weighty causes, municipal and other local Courts were at a very ancient date constituted with subordinate jurisdiction. These arrangements for the administration of justice have remained nearly the same in effect to this day, and a further step has been taken towards the decentralizing the administration of justice by the recent establishment or rather reconstitution of County Courts, for the adjudication of causes which could not without undue expense and delay be prosecuted in the central tribunals.

The system by which assizes are held before the judges of the highest Courts of common law, travelling from one chief town to another throughout the kingdom, is one of the many instances of the ingenuity and soundness of judgment which characterize our ancient political institutions. By the contrivance of assizes the advantage of local adjudication is combined with that of securing for the administration of justice the most eminent legal talent and experience. The judges of assize are attended on their circuits by the counsel

of the common law bar who practise in London in term time, and thus the practice of the local and central Courts is brought into uniformity, in a degree which would be otherwise unattainable.

For the holding of assizes, Royal commissions are issued, each of which usually includes two of the common law judges and several counsel, and delegates to them authority to hear civil and criminal causes in the eight several circuits into which the whole of England and Wales, except Middlesex, is divided. Each circuit comprises several counties. In practice the judges of the three Courts at Westminster choose their circuits by mutual arrangement on each occasion, and are then formally appointed under the Royal Sign Manual by commissions made out in the Crown-office of the Court of Chancery. The justices of assize hear causes of *nisi prius*, which are issues of fact tried by the intervention of juries. The phrase *nisi prius* ("unless before"); is derived from the ancient writ commanding the sheriff to bring a jury of his county before the judges at Westminster by a certain day, *unless before* that day the justices came to such county to hold an assize, which it was prearranged that they should do. In London and Middlesex the Courts of *Nisi Prius* are held in and after term before judges of the superior Courts, but the circuits at which *nisi prius* causes are heard in other places are usually made in the vacations after Trinity and

Hilary terms. A third assize has of late years been held in the counties of Lancaster and York.

The trials at assizes are of causes, criminal and civil, heard by juries according to the method of procedure explained in the preceding chapter. The authority of the judges of assize is derived from several commissions from the Crown, of which the most comprehensive are those of "gaol delivery" and of *oyer et terminer*, to hear and determine the offences specified.

Special commissions of *oyer et terminer* are sometimes issued by the Royal prerogative upon urgent occasions, where offences of a dangerous tendency have been committed in particular districts, and where the public security requires immediate inquiry, or where, from particular circumstances, the judges of the ordinary tribunals could not competently act. On these special commissions the procedure is nearly the same as at ordinary assizes.

The *Central Criminal Court* of London has a special jurisdiction relating to offences committed in a district contiguous to London and offences committed on the high seas.

The *General and Quarter Sessions* of counties are meetings of the county Justices of the Peace, held usually every quarter of a year for the trial of certain misdemeanours and other offences, and for some administrative purposes. The functions of the county

justices or magistrates, as they are commonly styled, are *firstly*, those which they exercise when assembled in General and Quarter Sessions for a whole county or division of a county ; and *secondly*, those which they exercise separately in petty sessions for smaller districts. The nature of the more extensive class of functions may be first stated.

The criminal procedure at General Sessions in many respects is similar to that observed at Assizes. These sessions cannot be held nor adjourned without the presence of two or more justices at least. When the requisite number of justices is present they are said to constitute a quorum, and those of them whose presence is necessary, in order to proceed with the session, are styled the justices or commissioners of the quorum. This word is derived from a clause in the commission issued by the Crown, by which the magistrates' authority is created. The commission was formerly in Latin, and the clause in question ran "*quorum A, vel B, vel C, &c., unum esse volumus*"—[of whom we will that A or B, or C, &c., be one]. The context is, "We have assigned you and every two or more of you (of whom any one of you the aforesaid A, B, C, &c., we will shall be one) our justices, to inquire the truth more fully by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be better known of all and all manner of felonies, poisonings, inchantments, sorce-

ries, arts magic, trespasses, forestallings, regratings, ingrossments, and extortions whatsoever, and of all and singular other crimes and offences, of which the justices of our peace may and ought lawfully to inquire."

The four Quarter Sessions are held uniformly at prescribed periods of the year. But besides these Quarter Sessions two magistrates, one of whom is a justice of the *quorum*, may at any time convene a General Session. The sheriff is required to return juries before the justices in their General Session.

The justices being assembled in sessions elect a chairman. The Court of General or Quarter Sessions may divide itself into two Courts for the better dispatch of business. When the business of the session is such as to be likely to occupy several days, it is usual to appoint a second chairman to preside in a separate Court.

Persons bound to attend at the General Sessions are :

1. All *justices* of the county or district ;
2. The *custos rotulorum* or keeper of the rolls of the county, who personally or by deputy is to attend with the rolls of the session ;
3. The *sheriff* personally, or by his under-sheriff, to return the precept and list of persons liable to serve on the grand or petty jury, to execute process, and for other purposes ;
4. The *coroners* of the county or district ;
5. The *constables* of hundreds, or high constables ;
6. *Bailiffs* of hun-

dreds and liberties; 7. *Gaol-keepers*, to bring and receive prisoners; 8. The keeper of the House of Correction, to give in a calendar and account of persons in his custody; 9. *Jurors*, as returned by the sheriff; 10. Persons under *recognizances*, to answer charges made against them, or to prosecute or give evidence.

The justices in session have jurisdictions—1. Criminal; 2. Civil; 3. Appellate.

1. In their *criminal jurisdiction* neither justices of the peace, acting for any county, riding, division, or liberty, nor the recorders of boroughs, try cases of treason, forgery, perjury, and some other specially excepted offences, nor in practice any of the more serious crimes that come under the denomination of felony. All indictments and presentments of such offences found by such justices or recorders are removable to the assizes on writ of *certiorari* or other process, issued by the judges of the Supreme Courts of Westminster.

The criminal procedure at the General Sessions is usually commenced by the delivery by the chairman of a charge to the grand jury, in which he makes such observations on the cases to be laid before them, as he thinks necessary for their guidance. The grand jury then retire to their room to receive such bills of indictment as may be brought before them. The proceedings of the grand jury are similar

to those already described. The bills indorsed by the grand jury are brought into Court by them and delivered to the clerk of the peace, who reads the indorsement with the name of the prisoner, and the nature of the charge. If the prisoner be arraigned thereon, the trial proceeds as at assizes. Where a verdict of guilty is returned, sentence is pronounced by the chairman, and if the punishment be dependent on the discretion of the Court, it is determined by the opinion of the majority of the justices present. From the Court in its criminal jurisdiction, there may be, in certain cases, an appeal, first to the Court of Queen's Bench, and thence to the Exchequer Chamber, and House of Lords.

2. The *civil jurisdiction* of the justices in session is given by numerous statutes, and relates, among other things, to the regulation of gaols and houses of correction, the licensing of public-houses and places of entertainment; the rating parishes in aid of other parishes in relieving their poor, and the management of the county rates. To this part of the business of the sessions, which is called the "County business," and will be further considered under the head of Local Administrative Government, the first day of the session is usually exclusively devoted.

3. The *appellate jurisdiction* of justices in session. Statutes which give summary jurisdiction to one or more magistrates generally allow their decision to be

brought, by appeal, before the justices collectively. There is also a similar appeal against a poor rate, on the grounds of invalidity, inequality, unfairness, and incorrectness; and this appeal is made either to the justices in petty sessions, and thence to the Quarter Sessions, or to the Quarter Sessions directly. When difficult questions of law present themselves in appeal cases, a special case may, by leave of the Court of Quarter Sessions, be stated for the decision of the Court of Queen's Bench.

Commissions of the peace are granted, not only for counties, but also for particular districts within them, and the jurisdiction of the county magistrates is exclusive of those districts.

Petty and Special Sessions are meetings held by justices for the transaction of magisterial business in a particular district or subdivision of county; if the meeting be for some special object, as the appointment of overseers or other local officers, it is called a special sessions.

Magistrates individually hold Courts and exercise other functions distinct from those of Quarter and General Sessions. The judicial authority of a justice out of sessions is both civil and criminal. In his civil jurisdiction he may adjudicate between masters and servants, enforce the payment of rates, the observance of the regulations of friendly societies, &c. In his criminal jurisdiction he may require

sureties of the peace, or recognizances for the peace or good behaviour, or act for the suppression of riots; and lastly, he has an extensive jurisdiction for the *summary punishment* of offences without the intervention of juries.

The division of offences into two classes,—those punishable by summary conviction, and those punishable after trial by jury,—has been mentioned in the twenty-sixth chapter. The number of offences in the former class far exceeds the number of those which are indictable. Offences punishable summarily relate principally to ale and beer houses, apprentices, petty assaults, customs and excise, distresses, drunkenness, friendly societies, game, hawkers, pedlars, highways, petty thefts, and injuries to property, pawnbrokers, railways, stage and hackney carriages, servants, vagrants, weights and measures, &c.

The power of punishing offences by summary conviction (excepting cases of punishment of contempt of the superior Courts) is derived entirely from Acts of Parliament. Numerous enactments have vested in one or more justices or other persons, the power of trying offences similar to those above mentioned. Such trial usually commences by information laid before the justice, who thereupon issues a summons, giving the person complained of notice of the nature of the charge, and of the time when it will be heard. In many cases, however, constables may apprehend

offenders without summons. The examination of witnesses, the hearing of the charge and defence, is regulated by rules similar to those observed in trials by juries. Upon the conviction of offenders before a magistrate or magistrates there is frequently an alternative punishment of fine or imprisonment, and the justices issue warrants, where necessary, for the apprehension of the offender, or for distraint and sale of his goods.

Borough Sessions.—By the Municipal Corporation Act (5 and 6 Will. IV., c. 76), cities and boroughs may have a system of magisterial judicature similar to that of counties. The ordinary duties of magistrates *out of sessions* are performed for such towns or boroughs by their mayors and other magistrates. Courts of Quarter Sessions also may be granted to cities and boroughs. The sole judges of such courts are *Recorders*, who have cognizance of offences in the same manner as Courts of Quarter Sessions in counties, but do not make nor levy county rates, nor grant licenses, nor exercise any of the powers which the Municipal Corporation Act vests in the town councils. A recorder must be a barrister of not less than five years' standing, but not a member of Parliament, alderman, nor police magistrate. He is appointed under the Royal Sign Manual, and takes precedence next to the mayor. The recorder holds his Court quarterly, or more frequently at times appointed by

him. Where the sessions are likely to last more than three days, a second Court may be held with the sanction of the Town Council, and an "assistant barrister" presides in such Court, who has been approved of by a Secretary of State.

By 9 and 10 Vict. c. 95, her Majesty may abolish or constitute as County Courts for such districts as she may appoint, various Borough and other Local Courts holden for the recovery of small debts.

County Courts.—In the exercise of his criminal jurisdiction, the sheriff was anciently required, twice in every year, to make a tour or circuit of his county; and a remaining power of his tribunal is still known as the sheriff's tourn, which takes cognizance of false weights, &c. But the jurisdiction and powers of County Courts, as now established, are of recent constitution. The modern County Courts exist in every county, and sometimes in divisions of counties under judges appointed, for the most part, by the Lord Chancellor from among barristers of seven years' standing. The jurisdiction of these Courts extends to the recovery of any debt, damage, or demand, not exceeding 50*l.*, and to all actions in respect thereof, except actions in ejectment, or relative to title of hereditaments and franchise; to dispute of wills and settlements; to libel, slander, malicious prosecution, adultery, seduction, or breach of promise of marriage. By *agreement* between the parties, causes may be tried in

the County Courts for recovery of any amount, and any action in which any title to land, tithe, toll, or franchise may be in question. The memorandum of agreement must be filed with the clerk of the Court at the time of filing the demand. There is an appeal from the County Courts to the superior Courts. With respect to actions in the superior Courts for demands within the jurisdiction of the County Courts, it is enacted that a plaintiff recovering in the superior Courts sums not exceeding 20*l.* in actions of contract, or 5*l.* in actions of tort, *shall not have his costs* allowed to him, unless the judge or Court certify to entitle him to them.

The County Courts are held once a month at least. If a claim exceed 5*l.* either plaintiff or defendant may demand a jury, and if the claim do not exceed 5*l.* the judge may grant a jury. The judge has power of ordering debts to be paid by instalments, and may punish by imprisonment in certain cases, as those of fraudulent concealment of property, and wilful default.

The County Courts have now exclusive jurisdiction as Insolvent Debtors' Courts, except in the district of the Insolvent Debtors' Court in London. The jurisdiction of each County Court in insolvency is over insolvents and defendants residing in its own district.

The *Court for the Relief of Insolvent Debtors* in London receives the surrender of the property and effects of persons in a state of insolvency for the benefit of their creditors. The jurisdiction of this

Court over insolvents and debtors extends about twenty miles from London. A person in custody for debt, damages, costs, or money due for contempt of any Court, may, after detention, petition the Insolvents' Court for his discharge. He must make an assignment to persons appointed under the authority of the Court, of all his property and effects, except a certain amount of necessities for himself and his family, and must file a schedule of all his debts, and also of all his property and emoluments. His property and effects may be sold and collected, and, by an order of the Court, vested in assignees, in trust for the creditors.

On the day appointed for hearing the petition, of which notice is given to the creditors, and advertized in the "Gazette," any creditor may offer evidence in opposition to the discharge of the insolvent. After the hearing, the Court may order his discharge immediately, if satisfied with his conduct; or, if it have been in any manner fraudulent, may order his imprisonment for a period not exceeding three years; or where he has incurred debts by breach of trust, or recklessly, or damages for criminal conversation, seduction, libel, or some other offences, the imprisonment may be for two years. When the insolvent is in a position to pay the amount of his debts unpaid at the time of his discharge, or is dead, leaving assets available for that purpose, the Court may permit

execution to be taken out upon judgment against the after-acquired property, and such proceedings may be renewed till the whole of the debts, with cost, due from the insolvent be paid. Meanwhile he is protected from imprisonment for any debt to which the adjudication of the Court extended.

The *Court of Bankruptcy* is (excepting the appellate jurisdiction in the Court of Appeal in Chancery above mentioned) divided into Courts having local jurisdiction. A bankrupt is a *trader* unable to meet the immediate demands of his creditors, and who has committed some acts of bankruptcy. The definition of the word "trader" here depends on various statutes and judicial decisions, which declare, respecting numerous occupations, whether they be traders within the meaning of the bankruptcy laws. Bankruptcy may be either voluntary or involuntary. Acts of involuntary bankruptcy are such as absconding, concealment, escape, or fraudulent arrest of the bankrupt, or fraudulent gift of his goods. But if he make assignment by deed, properly executed, and attested, and advertised of all his estate and effects for the benefit of all his creditors, this is not of itself an act of bankruptcy. An act of voluntary bankruptcy is where a trader files in the office of the Secretary of Bankrupts a declaration of insolvency or inability to meet his engagements, which declaration is to be advertised in the "Gazette." The general objects

of the bankruptcy laws are to enforce a complete discovery and equitable distribution of the property and effects of an insolvent *trader*, and to confer upon him thereupon the advantages of security from imprisonment, and *absolute discharge* from all debts provable upon his bankruptcy. It will be seen, therefore, that the protection given to bankrupts is of a much higher kind than that given to insolvents. The property of the bankrupt is surrendered to assignees for the benefit of creditors. After notice in the "London Gazette," the Court may hear the application of the bankrupt for discharge and creditors opposing it; and the Court having regard to the conformity of the bankrupt to the laws relating to bankruptcy, and to his conduct before, as well as after, his bankruptcy, judges respecting objections against allowing him a certificate for his discharge. The certificate may be either granted, refused, suspended, or granted upon conditions.

The jurisdiction of the London Commissioners of Bankruptcy extends forty miles from London. The seats of the country jurisdictions are several large towns appointed by Act of Parliament.

The *Ecclesiastical Courts* are the Courts of the bishops and archbishops, and their derivative officers. There are three species of Courts in which the Civil and Canon laws are under certain restrictions used. 1. The Ecclesiastical Courts. 2. The Courts of Admiralty.

3. The Courts of the two Universities. The Roman Canon Law is a body of law relating to those matters over which the Roman Church claims jurisdiction, and is compiled from the opinions of ancient Latin fathers, the decrees of General Councils, and the decretal epistles and bulls of the Roman See. Besides these pontifical collections there is in England a national canon law, composed of *legatine* and *provincial* constitutions, adapted to the exigencies of this kingdom. The legatine constitutions were enacted by national synods in the reign of Henry III. The provincial constitutions are principally decrees of provincial synods, held under divers ancient archbishops of Canterbury.

By the Civil Law is generally understood the municipal law of the Roman empire comprised in—
1. The Institutes of the Emperor Justinian, which contain the elements, or first principles of Roman law in four books; 2. his digests or pandects, containing the opinions of eminent lawyers, systematically digested; 3. his new code or collection of imperial constitutions in twelve books; 4. the novels or new constitutions, containing decrees of succeeding emperors.

The ordinary Ecclesiastical Courts are, first, the *Provincial* Courts of Canterbury and York—secondly, the *Diocesan* Courts of each bishop—thirdly, certain subordinate Courts called *Peculiars*, which are, in some dioceses, very numerous.

The Provincial Courts of the Archbishop of Canterbury and York are independent of each other, and from each of them there is an appeal to the Judicial Committee of the Privy Council. The highest of the Provincial Courts of Canterbury, the *Court of Arches*, which is a supreme Court of Appeal from the other Courts, is presided over by the Dean of Arches. Next is the *Prerogative Court*, which has an important jurisdiction in testamentary causes, and the office of granting letters of administration of the effects of all persons dying possessed of a certain amount of personal property within the province. The Court of Peculiars is the third archiepiscopal Court of Canterbury, and takes cognizance of matters arising in certain deaneries which are exempt from the jurisdictions of the bishops, in whose dioceses they are situated.

The archiepiscopal jurisdiction of the province of York is nearly similar to that of the province of Canterbury.

The Diocesan Courts of the several bishops decide matters of spiritual discipline, suspend or deprive clergymen, declare marriages void, pronounce sentence of separation *a mensâ et thoro*, try the rights of succession to personal property, and administer other branches of ecclesiastical law in their respective dioceses.

Archdeacons' Courts are generally subordinate to

the Courts of their respective bishops; of some of the 'Peculiars' Courts the jurisdiction comprises only single parishes. The total number of Ecclesiastical Courts in England and Wales appears, from the Report of a Commission of 1830, to be three hundred and seventy-two. This number includes Royal, Archiepiscopal, Episcopal, Decanal, Subdecanal, Prebendal, Rectorial, Vicarial, Manorial, and other Peculiars' Courts.

The ecclesiastical jurisdiction comprises causes relating to wills and testaments—causes of matrimonial separation and nullity of marriages—suits for tithes, church-rates, seats, and faculties—causes of church discipline, as suits against clergymen* for immorality, heterodoxy, and suffering dilapidations of their churches, and against others for brawling or other irreverence in churches and churchyards, incontinence and defamation.

A suit in an Ecclesiastical Court is commenced by a summons called a Citation, by which the parties are brought before the Court—except that testamentary causes are sometimes commenced by caveat by any one interested in the effects of a deceased person, in order to be entitled to warning before

* Against whom criminal ecclesiastical suits must, by 3 and 4 Vict., c. 86, be in accordance with that Act. It provides that any bishop of England or Ireland may issue Commissions of Inquiry respecting ecclesiastical offences by clergymen, and if a *prima facie* case be found by the commission, may proceed to hear the charge; or may send the case to the Court of Appeal of the province.

probate of the will or letters of administration be granted to another.

The executor or other person claiming probate of a will or testament, may cite persons interested in the property of the testator to appear to see the will propounded and proved. If they neglect to appear they cannot afterwards contest the validity of the will, unless their non-appearance arose from absence from the kingdom, or other satisfactory cause. In like manner next of kin, &c., may cite an executor or person interested, under a suggested will, to appear and prove it, who may, after default of appearance, be barred from after setting up the will. But if administration or probate be granted in common form, without citation of adverse parties, the grant may be called in again.

The person primarily entitled to such grant is the executor, residuary legatee, or next of kin. If no such person apply for the grant, others interested may do so, but must first call upon the persons primarily entitled to accept or refuse the grant, or show cause why it should not pass to the applicants.

The pleadings in the Ecclesiastical Courts somewhat resemble the pleading by bill and answer in equity, as already described. In criminal ecclesiastical proceedings the first plea is termed the Articles, which run in the name of the judge, who articles and objects the facts charged against the defendant. In some other

causes not criminal, the first plea is termed the Libel, which propounds the facts founding the demand; in testamentary causes the first plea is termed an Allegation. All subsequent pleas in all causes are termed Allegations. The admission of any plea may be objected to either wholly on the ground that the facts, if true, would not entitle the party to his demand, or partially for irrelevance or incapability of any proof, or of proof by admissible evidence. For the purpose of the argument merely, the facts capable of proof by admissible evidence are assumed to be true. But if the plea be admitted, the party who objected to it is still at liberty to contradict them.

The allegations are divided into separate articles, and notice is given of the witnesses to be examined in each article, so that the opposing party may be informed of the subjects to which he should direct his cross-examination of each witness. The examination and cross-examination of witnesses are taken by examiners or commission. The examiners, having the allegation before them, interrogate orally the witnesses on each article separately; but the cross-examination is by written interrogatories. The evidence is committed to writing, and the depositions are kept secret until the time when "publication passes."

The defendant may, either before or after the plaintiff has been examined, give an allegation controverting his plea. This responsive allegation may

be met by a further allegation of the plaintiff, and on that and any subsequent allegations the same course as that above described is taken, with respect to objections and the examination of witnesses.

All the papers and evidence are perused by the judge before hearing; the cause is argued, and the judgment delivered in open court. It will be observed that the ecclesiastical courts resemble the Court of Chancery, and differ from the Courts of Common Law, in that the judge determines on matters of fact as well as of law.

It is understood that the jurisdiction and procedure of the ecclesiastical courts will soon be greatly altered. Certainly the recent satisfactory experience of improvements in Chancery procedure affords a valuable guide in dealing with that part of the practice of the Ecclesiastical Courts, which resembles the former practice in Chancery; as, for one instance, the method of secret evidence and the extremely inefficient cross-examination by prepared written interrogatories.*

The *Admiralty Court*† has jurisdiction over maritime causes, civil and criminal. The Court is divided into two, the Instance Court and the Prize Court, each of which is held by a distinct commission. The civil jurisdiction of the Instance Court extends to contracts founded on maritime service, or considera-

* By a statute of 1854 oral evidence is admissible in Ecclesiastical Courts according to the discretion of their judges.

† See *post*, Chap. XXXVI.

tion, as where a vessel is pledged during its voyage for necessary repairs, agreements for mariners' wages, disputes between part owners of vessels, or respecting salvage, that is, allowance for recovering ships and cargoes, or respecting injuries by collision at sea.

The procedure of the Admiralty Court resembles in many respects that of the Ecclesiastical Courts. The criminal jurisdiction of the former extends to piracy and indictable offences committed on the sea or foreign coasts. It has been mentioned that the Central Criminal Court tries criminal offences committed within the jurisdiction of the Admiralty. By 7 and 8 Vic. c. 82, all Judges of Assize may try them.

The Dean of Arches may sit generally as assistant to or in place of the judge of the High Court of Admiralty. The Court may direct issues of fact to be tried before a judge of the superior Courts of Common Law.

The *Prize Court* adjudicates all causes, civil and criminal, relating to prizes or acquisitions made *jure belli* by a naval force. The property in the thing captured is considered, in accordance with international law, not to be absolutely taken from the original owners until condemned by authority as a lawful prize, and is then distributable in certain proportions among the captors. The High Court of Admiralty also decides on such questions of *booty* taken by land forces, as are referred to it by the Privy Council.

*Coroners' Courts** are held principally for inquiring concerning the manner of the death of any person slain, or who dies suddenly or in prison. This must be done upon view of the body. The coroner sits at the place where death happened, and the inquiry or "inquest" is made by a jury over which he presides. If on such inquest any one be found guilty of murder or homicide, it is the duty of the coroner to commit him to prison for further trial, usually at the next assizes. The office of coroner, which is very ancient, is one of the many proofs of the zealous protection which our ancient laws extend to life and property.

There are coroners of counties and of boroughs, beside a few of exceptional jurisdictions by ancient prescription. For the purpose of appointing county coroners the counties may be divided into districts, at the recommendation of the justices, by Order in Council. A district may then be assigned to each coroner, who is elected in much the same way as members of Parliament are, but holds office for life or until disqualified by age, absence, &c. The coroner may summon medical practitioners to give evidence on inquests, and direct the performance of *post-mortem* examinations. In boroughs, which have separate Courts of Quarter Sessions, the town council may appoint a fit person to be coroner of the borough, who shall hold his office during good behaviour.

* See *post*, Chap. XXXV.

There are some other local Courts in England, of exceptional jurisdiction, as those of the two universities of Oxford and Cambridge, which have jurisdiction over certain civil actions and suits wherein a scholar or privileged person is one of the parties. Courts of the counties palatine of Lancaster and Durham, the Lord Mayor's Court, and the Sheriffs' Court in London, held usually for actions for small debts, the Court of Commissioners of Customs, the Court of the Metropolitan Commissioners of Sewers, the Courts of the Stannaries and Cinque Ports.

The *Irish* system of judicature is nearly the same as that of England, and the law differs in very few respects in the two countries. The Court of Chancery in Dublin consists of two courts—that of the Lord Chancellor and that of the Master of the Rolls. The superior Courts of Common Law are three—the Courts of Queen's Bench, Common Pleas, and Exchequer, in each of which are one chief and three puisne judges.

The *Scottish* supreme judicature is consolidated in the Court of Session, which discharges both civil and criminal functions, and exercises a supreme jurisdiction in all civil causes in that kingdom either by virtue of original jurisdiction, or as a Court of Review.

The divisions of common law, equity, civil law, and

admiralty law are not observed, but the causes which in England would come under one or other of these denominations distinctively, are in Scotland submitted to the authority of the Court of Sessions without distinction.

The Court consists of thirteen judges, and for the transaction of civil business is divided into two Courts, having similar and co-ordinate jurisdiction. In the one Court sit the Lord Justice General and three puisne judges; in the other the Lord Justice Clerk and three puisne judges. These two Courts review judgments pronounced by one or other of the five remaining judges, who sit separately and hear causes, and pronounce judgment in the first instance.

Criminal causes are determined before the High Court of Justiciary in Edinburgh. Of this Court there are seven judges—the Lord Justice General, the Chief Justice Clerk, and five of the before-mentioned judges sitting by virtue of a separate commission. Six of these judges go circuits twice a year, the kingdom being divided in three circuits, and there being two judges on each circuit. Their criminal jurisdiction does not extend to cases of high treason, for which a special Commission of Oyer and Terminer, similar to that already described, would be required.

In Scotland all crimes are tried by jury, except certain minor offences. The number on a criminal jury or “assize” is fifteen, and the verdict, which is

that of the *majority*, may be either "guilty," "not guilty," or "not proven," the latter indicating suspicion, but amounting to an acquittal for defect of legal proof. Trial by jury also exists in civil cases in Scotland, and is part of the ordinary administration of the Court of Sessions.

Minor causes in Scotland are heard in the Courts of the Sheriffs, who have extensive judicial functions, and each sheriff generally holds eight sessions in a year in his county. The sheriff's substitute is the local resident judge, and from him there is an appeal to the sheriff. His civil jurisdiction is exercised without a jury, and extends to all actions on debt or obligation without limit, to questions of servitude and nuisance, or damage arising from undue exercise of rights of property, but not to questions of right to heritable property. Important criminal causes are tried in the Sheriffs' Court with a jury, but in minor causes he has the summary powers of a police magistrate.

CHAPTER XXIX.

THE ROYAL ADMINISTRATIVE PREROGATIVE.

THE consideration of the Government of England, in its legislative and judicial capacities, being now concluded, the last branch of inquiry respecting our domestic policy — its ADMINISTRATIVE OFFICES — remains to be considered.

All acts of English Government, it was said,* are prescribed by laws, and all acts of which laws prescribe the performance, are to be performed either by private persons, as subjects, or by the State in its representative capacity. The latter class of actions, again, has been divided into those which are Judicial and those which are Administrative.

Of the Administrative offices of Government a large part consists in providing for, and giving effect to, the decisions of the other two branches of Government. For example, the Crown, as supreme head of the Administrative Government, appoints judges and convokes Parliament; the Administrative Government enforces also the judicial decisions as affecting private subjects, by forcible control over their persons

* *Ante*, Chap. III.

or property. It is, however, the grandest characteristic of English Government, that the administrative power cannot execute the laws respecting private persons, except by their acquiescence, or until after the law has been specially applied to them by judicial decision. In other words, before any proceeding of Government affecting a subject personally can be carried into final effect he has, by English law, an appeal thereupon to the judicature.

A very convenient classification of the administrative institutions is, that which distinguishes them according to the sources from which their authority has been originally derived. Except Parliament itself, all the branches of Central Government, which have administrative functions, have been instituted either by Royal prerogative or by Act of Parliament. The former, of course, are usually the most ancient, though they may have been re-organized, or have had new duties imposed upon them, by modern statutes. Of these offices, originated by Royal authority, it is not always easy to describe with precision, the duties and the powers, for the extent of the prerogative of the Crown is frequently indefinable, has been continually the subject of dispute from very early times, and when questions respecting the lawful limits of that power have been submitted to the judges, they have, in some cases, answered with cautious obscurity.

There is some analogy between the sources of the authority of Government offices, and the sources of the authority of law. The general laws of England are, as has been mentioned, of two kinds,—“ Judge-made ” law, and laws made by Parliament. Of the former, the most ancient branch—the Common Law—is not a code recorded upon its first institution, but a collection of principles which, until written in legal compilations, or in reports of judicial decisions, could not be otherwise authenticated than by appeal to tradition. But the laws of Parliament have, for several centuries, been written before their enactment. In like manner, of those Government Offices which derive their authority from Acts of Parliament, the functions are prescribed in writing. The powers of offices instituted by Royal prerogative are not always similarly defined. In several cases, indeed, such offices have been, subsequently to their institution, regulated by Parliament. In others, where their powers have been judicially questioned, they may be ascertained from the decisions of the judges. In other cases, again, the functions of Administrative departments have been defined by orders and regulations issued from superior Administrative departments. But there still remains a large number of cases in which the powers of offices instituted by the Royal prerogative are ascertained by usage only. Consequently those powers have often, in the progress

of time, been enlarged or interchanged among different offices, or otherwise altered, and frequently are not even now circumscribed within exact limits.

These offices, in so far as they are instituted by Royal prerogative, are instruments of its ministerial exercise. Therefore, in order to comprehend their nature, it is necessary to be somewhat acquainted with the nature of the ROYAL PREROGATIVE, or that *customary authority which belongs to the Crown exclusively.*

And first of all, it will be convenient to notice the manner in which that authority is conferred. The succession to the Crown of England is in general hereditary, but the right of inheritance may be changed or limited by Act of Parliament. The rules, according to which the inheritance of the Crown descends, are nearly the same as those relating to inheritance of land according to the common law ; but in cases of descent, where land would pass to several coheirresses, the Crown descends to the eldest of them ; also collateral relations of the " half-blood " are not excluded from succession to the Crown as they recently were from inheritance of land. The Salic law, which excludes females from inheritance, and has been adopted in many countries of Europe, is not admitted with respect to the British Crown ; and the diversity between our own laws and those of Hanover in this respect occasioned the sepa-

ration, upon the demise of King William IV., of the successions to the English and Hanoverian Crowns previously held together.

But though the right to the Crown of England is thus hereditary, that hereditary right is not indefeasible ; it has been several times set aside in favour of a new line of succession, and the power of directing the right of succession to the Crown of England is expressly reserved to Parliament by law. By statute 13 Eliz., c. 1, " if any person shall hold, affirm, or maintain that the common laws of this realm *not altered by Parliament* ought not to direct the right of the Crown of England ; or that the Queen's Majesty with, and by the authority of Parliament, is not able to make laws and statutes of sufficient force and validity to limit and bind the Crown of this realm and the descent, limitation, inheritance, and government thereof ; such person so holding, affirming, or maintaining, shall, during the life of the Queen, be guilty of high treason ; and after her decease shall be guilty of a misdemeanour, and forfeit his goods and chattels."

Besides the differences already mentioned between the law of descents of land and the law of inheritance of the Crown, another consists in the exclusion of persons in communion with the Church of Rome or married to papists. By the statute 1 W. and M., st. 2, c. 2, it was provided that every person who should be reconciled to, or hold communion with the

see of Rome, should profess the Popish religion, or should marry a papist, should be excluded, and for ever incapable to inherit, possess, or enjoy the Crown ; and that, in such case, the people should be absolved from their allegiance, and the Crown should descend to such persons, being Protestants, as would have inherited the same in case the person so reconciled, holding communion, possessing, or marrying, were naturally dead. By statute 12 and 13 Will. III., c. 2, it was enacted that whoever should hereafter come to the possession of the Crown should join in the communion of the Church of England as by law established.

It is said that "the king never dies," that is, on the demise of one sovereign, the heir immediately succeeds to the throne. By 1 Vic., c. 72, in case of her Majesty's death during the absence from this kingdom of her successor, the Archbishop of Canterbury, the Lord Chancellor, Lord High Treasurer, Lord President of the Council, Lord Privy Seal, Lord High Admiral, and Chief Justice of the Queen's Bench, are appointed Lords Justices to exercise regal powers, until the arrival in the kingdom of the next successor to the Crown. The sovereign, at the ceremony of coronation, takes oath to three things—to govern according to law,—to cause law and justice to be executed—to maintain the religion and the Church. The following are the terms of the oath.

The Archbishop or Bishop shall say—Will you solemnly promise and swear to govern the people of this United Kingdom of Great Britain and Ireland, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the respective laws and customs of the same ?

The King or Queen shall say—I solemnly promise to do so.

Archbishop or Bishop—Will you, to the utmost of your power, cause law and justice, in mercy, to be executed in all your judgments.

King or Queen—I will.

Archbishop or Bishop—Will you, to the utmost of your power, maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by law ? And will you maintain and preserve inviolably, the settlement of the United Church of England and Ireland, and the doctrine, worship, discipline, and government thereof, as by law established within England and Ireland, and the territories thereunto belonging ? And will you preserve unto the bishops and clergy of England and Ireland, and to the United Church committed to their charge, all such rights and privileges as by law do, or shall appertain to them or any of them ?

King or Queen—All this I promise to do.

Then the King or Queen makes a solemn oath in the sight of all the people to observe the premises ;

and says, "the things which I have here promised I will perform and keep, so help me God."

Some of the administrative prerogatives of the Crown which principally affect the commonwealth may be now enumerated. Attention to them will materially assist the understanding of the nature and practical operation of the administrative government of this country.

1. The Queen has the sole prerogative of making *peace and war*. This, like all the high prerogatives of the Crown, is exercised by the advice, and upon the responsibility of the officers of State, and a check upon the undue exercise of this power, is that of parliamentary censure or impeachment of them for advising the improper commencement, conduct, or conclusion of a war. Moreover, Parliament alone has the power of granting the supplies requisite for carrying on war.

2. By the Royal prerogative almost all the *international* affairs of this kingdom are conducted. The sending ambassadors and consuls to foreign States is in the sole power of the Crown. So is also the reception of those ministers from foreign States. The reception of an ambassador or envoy accredited to the English Court, is subject to the approbation of the Crown, and consuls appointed by foreign powers to reside in different parts of this kingdom, and the British possessions, must be approved of by the

Queen. In her name are made, by the advice of her principal officers of State, treaties, leagues, and alliances between Great Britain and foreign countries, as will be hereafter more particularly mentioned.* In accordance with the law of nations, letters of *marque* and *reprisal* may be granted by the Sovereign to subjects, permitting them to cruize against hostile States. By the same prerogative may be granted passports and safe conducts. By the law of nations, no member of one nation can intrude into another country without the consent of the latter, which will usually be conceded upon the exhibition of passports granted to the traveller by the government of his own country.

3. The prerogative of the Sovereign, as one of the three independent powers constituting Parliaments, has been noticed in a preceding chapter.

4. By prerogative, also, the Crown has the supreme *military command* and absolute authority as General of the kingdom, and the power of raising and regulating fleets and armies; though this power is carefully subjected to parliamentary control in a manner which will be explained when the nature of the executive offices to which the military and naval forces are subject, is considered. By the statute 13 Car. II., c. 6, it is declared "That the sole supreme government and command of the militia, within all

* Chapter XXXVI.

his Majesty's realms and dominions, and of all forces by sea and land, and of all forts and places of strength ever was and is the undoubted right of his Majesty and his Royal predecessors, kings and queens of England; and that both, or either House of Parliament cannot nor ought to pretend to the same." These words recal to a modern reader the names of Marston Moor, Naseby, and Edgehil.

5. Another of the great prerogatives of the Crown is, that which constitutes the Sovereign the *fountain of justice*. Jurisdictions of the ancient Courts are derived from the Royal prerogative. The judges of the superior Courts of law and the Courts of Equity are appointed by the Crown, as are also the justices of the peace. The power of *pardon*ing persons convicted of crimes, and remitting the sentences of the laws, is vested exclusively in the Crown.

6. The Sovereign is also the *fountain of honour*, and in that capacity creates peers (as has been mentioned in a former chapter), and confers titles of honour. The great officers of State are appointed by the Sovereign, who may also create new offices, with this restriction, that new fees cannot be annexed, which would be a tax upon the subject, without the authority of Parliament.

7. One important branch of the prerogative is the erecting *corporations*, whereby a number of persons united together obtain legal powers in their politic

360 *Prerogatives relating to Corporation and Colonies.*

capacity, which they could not obtain by mere voluntary association. The Crown has the power of incorporating universities, colleges, companies, municipal and other public bodies, and of granting them by charter, powers and privileges not inconsistent with the law of the land. But many of the more considerable corporations (as railway companies, for example), require for the discharge of the purposes of their institution, powers exceeding those which can be conferred by Royal Charter, and such powers must be given by Acts of Parliament.

8. The Royal prerogative, by which *colonies* are governed, is one of the powers of the Crown. *Firstly*, as the allegiance of English subjects is not discharged by emigration, nor even by renunciation of it, and the taking another allegiance, it is held that, if an *uninhabited* country be discovered and planted by British subjects, the law of England, including Royal prerogative, is there paramount. But, as in a colony, it would obviously be impossible to carry into effect all the laws of the mother country, the interior polity of dependencies must be regulated, in a great measure, by local authorities. *Secondly*, in a country obtained by *conquest* or *treaty*, the Crown possesses a prerogative power over it, and by Royal Charter may establish its laws and form of government, may erect courts of justice, of civil and criminal jurisdiction, and otherwise provide for its municipal order. Of con-

quered countries the subjection to the conquering power is founded, according to the jurists, upon a compact, expressly or impliedly made between the conquered and the conqueror—on his part, that he shall cease to treat them as enemies; and on their part, that they shall become his subjects. But in conquered and ceded countries—the *Crown colonies*—their own laws have force, subject to the authority of a supreme state.*

9. The Queen is also, by the laws of England, supreme *Governor of the Church* of this nation. By the statute 26 Henry VIII., c. 1, it is enacted, that the king shall be reputed the only supreme head on earth of the Church of England, and shall have annexed to the imperial Crown of these realms, as well the title and style thereof, as all jurisdictions, authorities, and commodities to the said dignity of supreme head of the Church appertaining.

Convocations of the Church are regulated by the Crown in virtue of this authority. There are two convocations, one for the province of York and another for the province of Canterbury. The latter represents, in its constitution, the form of a Parliament, being composed of two houses—an upper house, consisting of the bishops and archbishops, and a lower house of representative clergy elected by the several dioceses at large, and the chapters therein.

* See *infra*, pp. 518 and 528.

The convocation of York consists of only one house. Convocations must be assembled by the Queen's writ. When assembled they may not enact, promulge, nor execute any canons, constitutions, or ordinances provincial, without the Queen's royal assent and license to make them ; and canons, constitutions, or ordinances made cannot be obeyed and executed without the Queen's royal license. No canons, constitutions, nor ordinances can be made or put in execution within this realm by authority of Convocation which shall be contrariant or repugnant to the Queen's royal prerogative, or the customs, laws, and statutes of this realm. The canons do not bind the laity, and the jurisdiction of convocation is in spiritual matters only.

Concurrent with the writs for the assembling of two Convocations, which are addressed to the two archbishops, writs are also issued from the Petty Bag Office in Chancery, addressed to the archbishops and bishops of England and Wales, who are commanded to attend the *Parliament** to be holden at Westminster, and to require the attendance of the deans of bishops' churches, archdeacons, and proctors ; each chapter being required to send one, and the clergy of each diocese two meet proctors to represent them. The number of members of the Lower House of Canterbury is somewhat variously stated, on account of dis-

* Parliament is summoned by the Queen's writs or letters issued out of Chancery. The writs are made out in the Petty Bag Office, which is a department of Chancery.

crepancies between the law and practice of election. According to one account, that house comprises twenty-two deans, fifty-three archdeacons, twenty-four canons, and forty-four proctors of the inferior clergy.

In modern times, the Executive has opposed the meetings of Convocations for purposes of deliberation ; and though the election of representatives is regularly made, and the Convocations regularly assembled, it has been usual to prorogue them before they proceed to any business. Convocations have been almost inactive for upwards of a century, but recently efforts have been made to renew their activity. The desuetude into which the exercise of their functions has fallen is an instructive illustration of the principles which preserve the vitality of our civil constitution. In 1664 the clergy waived the right of taxing themselves, conceding the right of taxing them to the Commons, and since that time have participated in the election of members of the House of Commons. The concession in question appears quite sufficient to account for the decay of the powers of Convocation. On the other hand, the House of Commons, by its jealous maintenance of its right of taxation, has rendered itself indispensable to the Executive Government, and so taken the most effectual means of preserving its vitality.

Convocations receive, as has been mentioned, double summons—first, by writ to attend in Convocation, and secondly, by writ to attend in Parliament.

This double summons is thus accounted for. In 1295, Edward I. being in great need of money, for the first time summoned the inferior clergy for the purpose of granting him subsidies. The object of the summons was not one likely to obtain much favour among the clergy, who objected to the summons itself on the ground that they ought not to submit to temporal authority in spiritual matters. The dispute was compromised by the issue of the King's writ to the archbishops, requiring them to convoke their clergy to York and London respectively. In addition to the summons by the archbishops to two Convocations, the clergy continued to receive the summons to Parliament.

The Queen, as the head of the Church, nominates the bishops and archbishops. This right of nomination, exercised in the Church of England from a very early period of its existence, after having been gradually, almost entirely, surrendered, was by a statute 25 Henry VIII. c. 20 in effect restored to the Crown ; it being enacted that, at every future avoidance of a bishoprick, the King may send the dean and chapter his usual licence (*congé d'élire*) to proceed to election, which licence is always to be accompanied with a letter missive from the King, containing the name of the person whom he would have them elect ; and if the dean and chapter delay their election above twelve days, the nomination shall devolve to the King, who may, by letters patent, appoint such

person as he pleases ; the dean and chapter, if they do not elect in the manner by this Act appointed, and the archbishop or bishops if they refuse to confirm, invest, and consecrate such bishop elect shall incur all the penalties of a *præmunire*.

Deans of cathedrals are elected by the chapters by *congé d'élire* from the King. and letters missive of recommendation in the same manner as the bishops. Where deaneries and (probably) bishoprics have been created since the passing of the last-mentioned statute, they are considered to be *donative* of the Crown, that is, the patronage is in the Crown absolutely, and the nominal election by chapters not required. Bishoprics in Ireland are donative by letters patent without *congé d'élire*. The patronage of a considerable proportion of the benefices of the inferior clergy belongs to the Crown.

The Queen, as head of the Church, creates and constitutes new bishopricks in the colonies. *Church Briefs*, or Queen's Letters, issued by Royal prerogative out of Chancery, and directed to the bishops and clergy and others, authorise special collections of alms. As head of the Church the Queen proclaims general fasts and thanksgivings. She is the *dernier ressort* in ecclesiastical causes.

The Act for the union of England and Scotland (5 Anne, c. 8) declared that the presbyterian government by kirk-sessions, presbyteries, provincial synods, and general assemblies, should " remain and continue

unalterable, and that the said presbyterian government shall be the only government of the Church within the kingdom of Scotland." The Act 10 Anne, c. 21, repeals the Act of 1690 by which presentation to all vacant churches in Scotland was given to the heritors and elders of the respective parishes, and restores to the Crown and private patrons their former patronage. To the Crown was also given the patronage which, in 1689, before the abolition of episcopacy in Scotland, belonged to bishops and dignitaries.

10. The sources of Royal *Revenues* were formerly very numerous. They were obtained from Royal demesne lands, woods, and forests, lands escheated to the Crown for defect of heirs, lands and goods forfeited for offences, &c. But now the hereditary revenues are paid into the Consolidated Fund, except the revenues of the Duchies of Lancaster and Cornwall, the latter of which belong to the sovereign when there is no Prince of Wales, and during his minority. In lieu of the former sources of Royal Revenue an annual sum, under the denomination of the *Civil List*, is settled on the Sovereign by Parliament, and is paid out of the Consolidated Fund. The Civil List of Queen Victoria was settled by the Act 1 Vict., c. 2, which states that Her Majesty had placed unreservedly at the disposal of the Commons, those hereditary revenues which were transferred to the public by her immediate predecessors; and that Her Majesty felt confident that her faithful Commons would gladly

make adequate provision for the support of the honour and dignity of the Crown. It is then enacted, that the hereditary revenues shall be carried to the Consolidated Fund, and a clear yearly sum of 385,000*l.* be paid out of the Consolidated Fund for the support of Her Majesty's household, and the honour and dignity of the Crown. The following are the items of

THE CIVIL LIST.

The Queen's privy purse	£60,000
Salaries of household and retired allowances	131,260
Expenses of household	172,500
Royal bounty and special services .	13,200
Pensions to the extent of 1,200 <i>l.</i> . .	..
Unappropriated moneys	8,040
	£385,000

The amount of pensions to be granted in any one year, in addition to previous pensions, is not to exceed 1200*l.*, and they are to be granted to such persons as have just claims to the royal benevolence, or in consideration of personal services to the Crown, the performance of public duties, useful discoveries in science, or attainments in art or literature. By the same Act the Treasury may direct the issue of 10,000*l.* out of the Consolidated Fund for the Home Secret Service.

Having thus noticed the nature of the Royal office and prerogatives, we may proceed to consider, briefly,

their effect upon the prosperity of the Commonwealth. Perhaps no subject of human interest has been more debated than that of the relative merits of different forms of government. The books in which the *vexata quæstio* is considered cannot be numbered ; for not only is there in almost every language an immense number of ponderous tomes, exclusively devoted to the controversy, but it is incidentally descanted upon in almost every volume of law, history, and political economy which has ever been written, and frequently in works of a more miscellaneous nature. Of course it cannot be attempted to settle a controversy which has run to so great a length in the compass of a few pages ; but even within that compass it is practicable to state precisely and to greatly narrow the question.

The earliest records of a debate respecting the relative merits of different forms of governments is so remarkable as an instance of the discussion having a practical object and practical result, and is so instructive a summary of the chief arguments which are likely to occur to a debater on the same topic, that it is worth while to cite the principal parts of it. It relates to the overthrow of the government of Persia about 520 B.C., and the accession of Darius, whose name has received a popular interest from its connection with the remarkable modern interpretations of cuneiform inscriptions at Nineveh and Persepolis.

Herodotus, in the passage, part of which I am about to translate, tells us that, after the overthrow in question, those who effected it met to take counsel on the state of affairs, and he assures us of the accuracy of his account of their debate. Otanes counselled that public affairs should be intrusted to the people at large. He thought there ought not to be a single ruler, and that a state could not be properly adjusted where the power was allowed to an irresponsible person to follow his own purposes. The temptations to which he would be necessarily subject from the inherent infirmity of human nature would prompt him to aggrandise himself, to violate justice, to be jealous of the worthiest citizens, and to listen to the counsel of sycophants. "But," pursued this ancient republican, "a democracy has, in the first place, this noblest characteristic—equality of laws; in the second place, does none of those things which a monarch does. The rulers obtain sway by suffrage,* and have a responsible authority, and all counsels are submitted to the people. I give my opinion, then, that, abolishing monarchy, we should elevate the people; for to the many all things belong" Such was the opinion which Otanes offered.

Megabyzus, however, counselled them to resort to an

* So I venture to translate *πᾶλος*, of which the root is *πᾶλλω*, another form of *βάλλω*; whence the English "ball" and "ballot" It cannot be supposed that Otanes intended the election of rulers to be by "lot."

oligarchy, saying, "In what Otanes said in condemnation of tyranny I entirely concur. But when he urges you to give power to the people, he deviates from the soundest opinion. Nothing can be more inconsiderate and oppressive than an unpractical assembly. It is perfectly intolerable that men, flying from the oppression of a tyrant, should fall under that of an unrestrained populace. The former, whatever he does, at all events does it knowingly; but the latter know not what they do. How, indeed, can they know, not having been taught nor perceiving what is fair and suitable; but precipitately hurrying on affairs without thought, like a winter torrent? Those who would give power to the people counsel evil to the State. Let us then, choosing a number of the most eminent men, assign the government to them; for among them we ourselves shall be. Of the best men the counsels are naturally the best." Such was the opinion of Megabyzus.

Darius was the third who delivered his opinion, saying, "It appears to me that what Megabyzus said respecting the multitude was perfectly just—not so what he said of an oligarchy. If the three governments be considered, and each of them supposed to exist in its most perfect condition—democracy, oligarchy, and monarchy—I say that the latter is by far the most excellent, for nothing can be better than the best man. Possessed of judgment, he would rule the people irreproachably, and especially would keep

secret his counsels respecting the disaffected. In an oligarchy, among a number of persons, even acting virtuously towards the community, violent private jealousies are inevitable, for, as each of them will be desirous of superiority, and to prevail in council, mutual animosities must arise—and thence seditions, and thence bloodshed. From the bloodshed, the next step is to monarchy—and this, of itself, shows the superiority of a monarchy. Where, again, the people govern, it is impossible but that disorder should arise. Disorder thus affecting the community, the evil doers are not sundered by animosities but closely combine—act in concert to wrong the community. This continues until some one man of the people arises and overcomes them. He, of course, gains the admiration of the people, and, gaining it, becomes supreme ruler. Here then, again, the superiority of monarchy appears.”

In this, the earliest recorded debate on forms of national government, we find a compendium of the principal arguments which have been since adduced on the same subject. It may be divided into two branches, for the most essential merits of any government are these two—(1) Stability, and (2) Justice; of which the distinct natures must be continually borne in mind if we would avoid needless perplexity and prolixity in this discussion. Let us examine, first, the effect of different forms of government on their *stability*.

(1.) The arguments just cited, and indeed almost all arguments on the same topic, speculate too confidently as to the results of certain human motives. It is very unsafe to form conclusions from these antecedent probabilities alone; for when recourse is had to the safer inferences from experience, those conclusions are often found to be falsified. In the case before us, by argument from human motives it seems at first sight to be well made out that all oligarchies and democracies are necessarily unstable and liable to be displaced by monarchies, and that the latter is necessarily stable. But the argument proves too much: for we know, historically, that monarchies are not of necessity stable; that monarchies may be destroyed by internal dissension as well as the other forms of government; that monarchies may be displaced by republics as well as republics by monarchies.

It seems clear, therefore, that the stability of a government depends upon something else than its form. It may be overthrown either from within or from without;—if from within, because the malcontents either outnumber, or by sudden attack overpower the well-affected;—if from without; either because the nation is not sufficiently united in its own defence, or because it is not adequately supported by foreign alliances, or because its total strength is not sufficient to resist foreign aggression. But in all these cases the stability of the government must, in a greater or less degree, depend on public opinion.

For revolutions never, and foreign invasions rarely, overthrow the government of a people united and determined in the defence of their national institutions.

But though the strength of a government may not strictly depend on its form, it may be argued that such dependence is indirectly established by the influence of the form of government or its popularity. It is, however, contrary to all experience that a nation should desire to change the form of government which it has for another, from mere abstract preference for the form of the latter. There may be a few in a nation who, upon abstract principles, are opposed to the existing form. But these are but few; the mass of mankind do not reason on abstract principles, but on experienced results, and, without inquiring very particularly respecting the form of a government, will be well contented with it if they believe it to be just. The pseudo-philosophers who preached republicanism in France in the last century were such abstract reasoners; but their counsels would never have prevailed had not the tyranny of the old French monarchy become insupportable. Those who regard hereditary monarchy as a divine institution are such abstract reasoners; but public grievances and difficulties were far more influential than the doctrine of the divine right of kings in the restoration of monarchy in England in the person of Charles II.

It seems clear that if we would practically determine the relative strength of different kinds of governments, we must regard not merely the effects of their forms, but also the influence of their acts in securing the support of public opinion. As such opinion is based partly on sentiment and partly on reason, it is of course quite possible that the judgment of a community respecting its government may be erroneous. The loyalty may be superstition and fanaticism, or the unpopularity, unreasonable impatience and distrust. But as popular education and civilization advance, public opinion becomes less subject to errors of prejudice, passion, and credulity, and consequently more and more powerful and permanent. A Constitution supported by the deliberate opinion of an educated nation must, therefore, be necessarily far more stable than any form of government which is supported by merely sentimental loyalty. In other words the highest degree of security of national government is that which is attained by the knowledge and virtue of the people themselves.

Οὐ λίθοι, οὐδὲ ξύλοι, οὐδὲ
 Τέχνη τεκτόνων αἱ πόλεις εἰσιν,
 Ἄλλ' ὅπου ποτ' ἄν ᾤσιν ἌΝΔΡΕΣ
 Αὐτοὺς σῶξιν εἰδοτες,
 Ἐνταῦθα τέιχη καὶ πόλεις.*

[Not stones, nor wood, nor arts of workmen,

* Alcæus.

make cities, but where there are *men* knowing how to protect themselves, there are bulwarks and cities.]

If all the functions of government were properly *delegatory*, the mode of constituting a government which would give to it the greatest popular strength would probably be a direct delegation by the people. But in fact, government cannot be wholly *delegatory*. The majority of the people neither form opinions, nor profess to be competent to decide on many questions with which a government has to deal ; and even on those political questions which have popular interest, public opinion is not infallible. Though exempt from some erroneous influences which affect private judgment, it is (as was shown in a former chapter) subject to other erroneous influences from which private judgment is exempt. Moreover, the extreme inconvenience of continually collecting the suffrages of the nation at large, renders it unavoidable that large discretionary powers should be given to every government. Regard, therefore, both for public convenience and public justice requires that, for many purposes, government should be not *delegatory* but *representative*. A careful distinction between these two capacities of government would serve to reconcile many of the conflicting conclusions of able constitutional writers. In so far as government is properly *delegatory*, its stability clearly

depends on its control by popular suffrage. In so far as government is properly representative, the stability ultimately depends on the public confidence that the discretionary powers of government are exercised with justice. I say "ultimately depends," because there may be occasions of temporary excitement which require, for the immediate protection of the authority of the State, other provisions, such as have been already considered in the chapter relating to the functions of the House of Lords.

These considerations bring us to the second branch of the present inquiry—the effects of forms of government with respect to its *justice*. In so far as government is properly delegatory, the requisite of its justice is obviously secured by the control of popular suffrage, on which also (as was said) the stability of government depends. With respect to the justice of government in the exercise of its discretionary powers, additional provisions are required; and of these, the most important is the effectual separation of distinct political functions.

It seems almost impossible to overrate the constitutional importance of separation of the Legislative, the Judicial, and the Administrative functions. That government alone can be purely arbitrary in which these functions are combined. For where, as has been already remarked, the same power which makes laws administers them, it will soon proceed to act

upon laws made for special occasions, that is, to dispense with general laws and rule arbitrarily ; but when the legislative power is in the hands of those who have no share in executing the laws, the greatest temptation to enactment of unjust laws is wanting. Men have no abstract preference for injustice, and when their interests do not prevent them, will, for the most part, desire to act justly ; so that it may be reasonably anticipated that the laws will be more conformable to justice as the personal interest of the legislative body is less affected by its resolves. Moreover, general laws are almost precluded by their very generality from being intolerably severe or wholly without regard to established principles of government.

The division of executive functions into two distinct branches—the Judicial and the Administrative—is similarly important. The operation of laws must, in a great degree, depend on their interpretation, for it is beyond the power of human forethought to contrive, and of language to express, legislative enactments anticipating and providing for every special case which occur in the diversity of human affairs. Consequently, if the judicial power were in the hands of the administrative body, the latter would obtain a considerable legislative power, and there would be continual motives to misinterpret legislative enactments. On the other hand, if the judicial power were combined with the legislative, the latter having

then the power of making laws for every special case, would not be under the necessity of framing them with that generality which, it has been said, is one of the conditions of their justice.

That due separation of the three functions of government which is here contended to be essential to their proper discharge, is in England secured chiefly by the exercise of the Royal Prerogative in the choice of the executive officers, subject to the indirect control of Parliament in the manner already described. It may be asked, would not the responsibility of the government be better secured if the judicial and administrative bodies were chosen by the people directly, as their representatives are chosen? First, with respect to the selection of judges, we have the best of all proofs—that of experience—that their election may be safely intrusted to the administrative body. Mr. Bentham considered that judges should, in general, be elected by the persons subject to their jurisdiction.* His objection to the choice of judges by the administrative power, seems to have been founded on an apprehension that judges so chosen would be always influenced by Court favour. But in England, at least, this apprehension is imaginary. The responsible advisers of the Crown, whose tenure of office is subject to the will of Parliament, dare not endanger their own parliamentary influence by recommending for

* Draught for the organization of judicial establishments, Art. 2.

the judicial offices men obviously unfit for them. By a rule well understood, the judges are chosen from among those who have attained eminence at the bar, and who are, for the most part, marked out for their offices by the approbation of their professional brethren. Whereas, it seems obvious that judges chosen by the people must gain their position by previous subservience to popular prejudices of a considerable part of the electors; and, what is even more important, cannot act impartially between those who have supported and opposed the election.

With respect to the administrative body there seems to be equally grave objections to direct popular elections, if that body be chosen for a fixed term absolutely; for then it is, during that term, subject to none of the constitutional checks which, in England, control it every instant. Here the Constitution gives the power of changing the administrative policy immediately upon its ceasing to receive parliamentary sanction; but an Executive, chosen for a determinate number of years, has, for the time, an authority, much more nearly approaching that of an oligarchy, for the power of public opinion acts upon such a body the less directly and effectively the more distant the period when its power terminates. If we compare the two ways of selecting the executive, by Parliament and by popular suffrage,

the accession of popular power, in the latter case, seems to be rather apparent than real. An efficient popular representative in Parliament secures the control of the administrative body by public opinion, not merely as expressed at the time of institution of that body, but as modified by the subsequent course of political events.

An advocate for republican government may concede that the Legislature should have the power of requiring, whenever it deems proper, the immediate change of the executive, and yet contend that the chief magistrate's office ought to be elective. When the question respecting the relative merits of monarchical and republic government has been discussed on abstract principles, the solution of the question will generally be found to have virtually depended on the adoption of either the theory of Representative Government on the one hand or of Delegatory Government on the other. If it be assumed that all the functions of government are properly delegatory, it certainly seems to follow that all the officers of the State should be directly nominated by those whose delegates they are.

But, in fact, the question respecting the value of republican and monarchical forms can seldom be properly regarded thus abstractedly. The stability of hereditary monarchical institutions depends partly upon the habitual loyalty of the people to an existing

dynasty. Like a president of a republic, the founder of a new dynasty is subject to the opposition of the party adverse to him, but with the increased acrimony due to the indefinite prolongation of his power. Therefore, if either kind of government could be shown to be abstractedly the best, it would not follow that a nation would necessarily be benefited by substituting it for the other. That in both monarchical and republican constitutions, a wise and upright government is attainable, I think we have, in modern times, very manifest proofs. Indeed, the excellence of government so greatly depends on the separation of the executive and legislative branches, that where that separation is effectually secured, the manner in which the head of the State is chosen becomes of secondary importance. But that a more perfect attainment of real liberty is attainable under a monarchical than under a republican government, appears to me to follow from these considerations.—In a constitutional monarchy the Sovereign acts as a moderator between the several political parties in the State. In a republic there is not nor can be such a moderator. The chief magistrate must by the very terms of his election represent one party. True, that party may be the majority, but I apprehend that the doctrine that the majority should have the sole executive power is among the numerous unproved assumptions of politics.

The government of party appears to me, from reasons already given, to be without corresponding advantages, unavoidably contentious, intriguing, partial towards the majority, and prone to perpetuate its power by distribution of patronage among political adherents rather than among the most competent candidates. Now, where the head of the State is periodically elected, party government is inevitable, and all its attendant evils inevitable also. Add to this the popular distraction, and political struggles and animosities—not to say constitutional danger—which attend the election of a chief magistrate; and I think it must be allowed that very important advantages ought to be shown to attend such election before it can be entitled to even an abstract preference to hereditary succession.

To allow the argument in favour of republican government full weight, let us concede that by the popular election a competent chief magistrate will be generally chosen. Where the people are well educated, it may be fairly admitted that this will be the case. Let us concede further that the vicissitudes of hereditary succession bring bad monarchs as well as good. This also may be conceded; but it may be added that the danger of the succession of an unconstitutional sovereign is effectually guarded against by constitutional limitations of the Royal power; and that great care is taken in England for the

instruction of the heir to the Crown in constitutional principles. Conceding, however, all the advantage that can be fairly claimed for a republic in this respect, we are by no means constrained to admit that such a form of government secures public liberty and justice more completely than our own. In a republic and in a monarchy the chief magistrates have entirely different offices—the former takes an active part in the initiation of political measures—the latter provides that they shall be initiated by convening Parliament and appointing administrative officers. So that the comparison between the republican form and our own is almost reduced to this question—Should the initiation of political measures be intrusted to one, the chief of the State—or to many, the administrative council and Parliament? To me it appears far more politic to divide the task among many, far more favourable to popular liberty to diminish the power by distributing it. It is an attractive doctrine among political speculators that there is ever in the State one man the wisest, the ablest, and the best; that he should be sought out with all diligence, and to him should be intrusted the whole task of governing. But pleasant as this doctrine is to those who have transcendental views of the superiority of pre-eminent genius, experience gives a much less romantic account of the capacity of the human mind. What is expected of this

desired great man? That he should be acquainted with every branch of human legislation, a cyclopædia of political knowledge, a paragon of virtue unassailable by any temptation, and of moral courage unmoved by popular infatuation. It will be time to believe in the existence of such a man when he is discovered; and a popular election does not seem the likeliest way of discovering him.

Are we then to conclude that the head of the State ought to have little power and be of little importance? Of moving power, little; of regulating power a most important share may, as our modern history shows, be advantageously intrusted to him. There are in the political, as in every other kind of machine, both these kinds of power. The motive power in government is, or ought to be, possessed by those whose welfare it affects—the nation at large; the regulating power, in those in whom the different parties in the nation concur in placing that confidence which is reposed in the Judge who presides over a tribunal, or the Moderator who presides over a council. But of this confidence an essential requisite is impartiality, which is not attainable by popular election, nor in any other way hitherto devised than by methods of *pre-scribed* succession; of which methods, hereditary succession is for many reasons the most convenient.

To suppose that the power of an English sovereign

is unimportant, is to take but a superficial view of the principles of our Constitution. A State in which all the rulers are popularly elected, is frequently as a watch without a balance-wheel, or a steam-engine without a governor. But the sovereign of England is, to the vast machine of government, that regulating power by which all its different parts work uniformly and unjarringly. The power of the Crown is so well defined by the Constitution that it is almost unlimited for good and almost impotent for evil.

The Royal prerogative effectually prevents ambitious men from gaining unconstitutional power, and the wealthy nobles who possess princely domains from affecting princely domination. The control of a wise sovereign restrains dissension at the Council Board, maintains a balance between the two Houses of Parliament, stills the voice of faction, mitigates party-conflicts among the people by uniting them in the common bond of loyalty. A virtuous sovereign gives a high example of public morality, checks the licentiousness of fashion, and the prostitution of political power. An illustrious sovereign gains for the government respect abroad, and for the people honour and a fair name among other nations. A patriotic sovereign devises and encourages voluntary efforts for public benefit—the undertakings of a wise philanthropy—or those magnificent enterprises for the advancement of industrial arts which nobly record

the national industry, and yet more nobly testify to the spontaneous co-operation of the monarch and the people. Lastly, an energetic sovereign stimulates the energy of the whole nation by example, and by systematic and progressive inspection of their works. Englishmen are not yet mere pieces of political machinery—not yet insensible to the stimulus of loyalty—and their hearts are yet animated with high resolves by the approval of a monarch between whom and the people there is mutual confidence based on mutual esteem. Such are the means of good in the hands of a wise, virtuous, illustrious, patriotic, and energetic Sovereign—of one whose fidelity to the nation is recompensed by the nation's affection—of one whose noblest insignia are loyalty and a good name—of one whose highest honour is, not the flattery of the courtier, but the silent praise of millions—of one whose protection is, not the soldier's sword, but the panoply of a nation's prayers—of one whose best dominion is in the hearts of the people. Have we known such a Sovereign? To that question no Englishman needs the answer.

CHAPTER XXX

PARLIAMENT, PRIVY COUNCIL AND ITS COMMITTEES.

OF the administrative institutions of this kingdom Parliament must unquestionably be regarded as the highest. The Houses of Parliament exercise many administrative functions previously described, as those relating to the change of "ministry"—the removal of judges on the joint address of the two Houses—the private Bills in which general rules are specially applied on private petition and evidence—claims of peerage in the House of Lords—election proceedings in the House of Commons—returns of accounts and papers—and a general supervision of the administrative Government exercised by means of questions and motions relative to its acts.

The classification of the other administrative offices of government into those originated by Royal prerogative, and those originated by Act of Parliament, was adopted in the preceding chapter, not merely for the sake of the historical value of the classification, but also because it indicates a difference in the general character of the two kinds of offices. The prerogative offices are, of course, the earliest in date, and their functions, for the most part, relate to the execution of ancient laws and the ministerial exercise of the ancient powers of the Crown. The offices

originated by statute are nearly all of modern date, and have duties and powers connected with modern wants. The proceedings of the latter kind of offices are almost uniformly recorded in Reports which they are periodically required to submit to Parliament.

The first of the prerogative offices is the PRIVY COUNCIL, of which the legislative and judicial functions have been mentioned in former chapters, and the administrative functions remain to be considered. The acts of meetings of the Privy Council held before the sovereign in person are said to be acts of the Queen in Council. The chief officer of the Council is entitled the Lord President, who is the fourth great officer of State, and whose office, as ancient as the reign of King John, was revived in the time of Charles II., in the person of Antony, earl of Shaftesbury. By the statute 31 Hen. VIII., c. 10, the Lord President has precedence next after the Lord Chancellor and Lord Treasurer. The Lord President's office is to attend the Queen, to propose business at the council table, and to report to the Queen the transactions there.

All the members of the Privy Council are appointed by the sovereign, and hold their offices during the Royal pleasure, but almost always retain them during their lives. The list of Privy Councillors usually includes the Royal Family, the Archbishops, and some of the bishops, most of the principal judges,

the Speaker of the House of Commons, the Queen's ambassadors, and those who have been appointed to the chief administrative offices. The present usage is, that only those members of the Council attend its deliberations who are specially summoned thereto, and for most purposes the persons summoned are the principal administrative officers of State or "ministers" for the time being.

The Council continues in office for six months after the demise of the sovereign, unless sooner dissolved by the successor to the Crown. Usually the members of the Council are all reappointed by the new sovereign. On the demise of the Crown the Privy Council immediately assembles and orders a proclamation of the succession to the throne.

The meetings of the Privy Council, recognized by law, are not to be confounded with Cabinet Councils, which are merely voluntary assemblies of certain members of the Privy Council, who, for the time being, compose the conclave designated by the French word "Cabinet." At such voluntary meetings, of course, the Queen is not present, but their proceedings are usually communicated to her at private audiences of "ministers" who have been present at them.

The purposes for which meetings of the Privy Council are held are much better defined by law. The powers of that body are (1) prerogative; (2) statutory.

(1). The Privy Council may inquire respecting

unlawful attempts against the State, and has a power of *commitment* of offenders to safe custody, in order to bring them to trial in a court of law. But this power, unless restricted, might possibly be used as a means of political oppression, and accordingly the power of the Privy Council extends only to inquiry, not punishment, and persons committed by them are entitled to the *habeas corpus* in the same way as if committed by an ordinary Justice of the Peace.

The Royal prerogative of issuing Proclamations is frequently exercised in Council. The manner, time, and circumstances of putting the laws in force are frequently left to the Crown. In time of war the Queen may, by proclamation, lay an embargo upon all ships of subjects, either for the purpose of preventing communication with the enemy on whom an attack is meditated, or with a view to the employment of the ships in the service of the nation. Parliament is usually dissolved by Proclamation, after having been previously prorogued, as this is considered a more courteous way of terminating a Parliament than by dissolution without prorogation. Proclamations are also issued for the assembling of Parliament for despatch of business; and are made in order to publicly announce the declaration of war against a foreign power, to notify the enforcement of some Acts of Parliament, to direct the observance of a Fast or Thanksgiving; and for some other purposes.

“Proclamations have then only a binding force,”

says Coke,* “when they are grounded upon and enforce the laws of the realm.” A statute of the reign of Henry VIII. gave the King’s proclamations the force of acts of Parliament, but this statute was repealed in the following reign.

The sheriffs are annually nominated at a meeting of the Council by the Queen, to whom is submitted a list containing the names of three fit persons for each county. The first on the list is usually chosen, unless he assign good reason for exemption. At the meeting of the Privy Council the Queen pierces with a punch a perforation opposite the name of each sheriff chosen, and this process is usually known as that of pricking the sheriffs.

The Queen’s speeches to Parliament are settled in Council. It has been made a matter of dispute to what extent orders in Council, for the blockade of foreign ports, and the seizure of vessels trading to or from them, is legal. In favour of the orders in Council of 1807 and 1808, declaring France to be in a state of blockade, it was contended on the one hand that they were duly made in virtue of the Royal prerogative of making war, and were analogous to orders made by the same authority for prohibiting the supply of the enemy with commodities contraband of war. On the other hand it was contended that to declare a blockade against a place without stationing an armed force there to maintain

* 3 Inst. 162.

it, is only a way of restraining the national commerce by an exercise of Royal prerogative, and that, therefore, such fictitious blockades are indirect assumptions of the legislative power of Parliament, and it is now decided that a lawful blockade requires the presence of a force sufficient to maintain it. As is the case with most other prerogative offices, questions must occasionally arise as to the limits of the authority of Privy Council, and it is difficult to define precisely what may or may not be lawfully accomplished by orders in Council. In cases of great emergency, such orders have been issued clearly contrary to laws—as for instance for prohibition of the exportation of corn in time of scarcity, when the nation, being at peace, the right of embargo did not exist;—but in such cases the advisers of the Crown have applied to Parliament for Acts of Indemnity. Orders for the restriction of trade, except in conformity with the laws of war, and orders suspending any Act of Parliament, except where the power so doing has been expressly reserved by statute, would require Acts of Indemnity.

The Queen in Council establishes laws and ordinances for the Colonies which have not legislative assemblies, and may disallow enactments of Colonial legislatures.

(2). The Queen in Council may, by the Navigation Act of 1849,* place the trade between two or more colonies on the footing of a coasting

* 12 & 13 Vic., c. 29.

trade ; may by proclamation regulate the proportion of seamen necessary to constitute a vessel a British ship for the purposes of that act ; and may, by order in Council, regulate certain restrictions and duties on foreign vessels trading to or from British dominions. The Act 6 Geo. IV., c. 78, confers on the Queen in Council extensive powers of making Quarantine regulations, having for their object the prevention of the communication of contagious diseases from foreign countries. By order in Council effect is given to recommendations of the Ecclesiastical commissioners. The Act of 1835, for the regulation of Municipal Corporations, gives the Queen the power of granting, by advice of Privy Council, to any unincorporated town or borough in England and Wales, a charter of incorporation conferring the powers and provisions of that act. The Queen, by orders in Council, may regulate the practice of Vice-Admiralty Courts in her possessions abroad—may appoint the towns in which assizes are to be held in this country—may prescribe rules for preserving order and promoting health in vessels bound to the colonies—may give a copyright in this country to artists and authors, subjects of foreign countries, which afford reciprocal protection to English subjects. The Privy Council may order the discontinuance of burials in the metropolitan graveyards. It may also authorize “Art Unions” which distribute works of art by lottery.

. By 1 & 2 Vict., c. 106, an annual return is to be

made to the Queen in Council, by the bishop of every diocese, of the names of all benefices in his jurisdiction, and of the names of all spiritual persons holding them, the residents and non-residents being distinguished.

It would be impracticable to enumerate all the powers exercised by the Privy Council, either in virtue of Acts of Parliament or of the Royal prerogative. It appears to be a rule that those Royal powers which are of the most general operation are discharged in Council. Orders in Council are usually published in the "London Gazette."

A large part of the duties of the Privy Council are performed by *committees*, one of which, the Judicial Committee, has been already noticed.

The BOARD OF TRADE is a committee of the Privy Council, designated more fully "The Committee of Her Majesty's Privy Council appointed for the consideration of matters relating to Trade and Foreign Plantations." To this Board was originally assigned the general superintendence of colonial business, subsequently transferred to the office of the Secretary of State for the Colonies; but more recently the functions of the Board have been principally confined to mercantile matters. The Secretary of State for the Colonies has, however, usually referred to the Board of Trade for its consideration and report all Acts relating to trade. The disallowance of, or assent to, acts of Colonial Legislatures, is made by order in

Council. founded on Report of this Committee. Of all private Bills in the House of Commons, except some personal Bills sent from the Lords, "breviates" or summaries are made, which, with the Bills, are examined in this Department. The Foreign Office also refers to this Board questions sent by consuls abroad for decision here, and the consular returns are transmitted by the Foreign Secretary to the Board, which corresponds also with the Treasury and Board of Customs on questions of revenue. The Board of Trade receives and announces notifications respecting quarantine blockade and trade regulations of foreign ports.

The initiation of parliamentary measures for the alteration of the Tariff, has been usually assigned to the Board of Trade. Its executive functions having fallen into desuetude, the numerous ex-officio members (who are persons holding high offices, both ecclesiastical and political) seldom meet at it. Its duties, of a consultative nature, include the advising upon commercial treaties and tariff treaties with foreign powers and Royal charters incorporating English companies. Lately, however, the consultative duties have been increased by the Board taking part of the work of the Colonial Office, and advising upon the forms of political constitutions for the colonies, and making certain investigations of colonial transactions which involved the examination of evidence.

Besides its consultative duties, the Board of Trade

has several of an executive kind now imposed upon it by recent statutes. The *Naval Department* superintends the public business relating to the British mercantile marine, and to the laws of the British merchant service. Subject to the Board are the local marine boards at seaports, and the general superintendence of the examination of persons wishing to obtain certificates of competency as masters and mates of foreign-going ships. The register of all the men engaged in the merchant service is kept under the direction of the Board of Trade, which may appropriate certain sums for the encouragement of Sailors' Homes. The Board of Trade and the local marine boards appoint inspectors, who are to see that sea-going vessels are provided with medicines, to report on accidents at sea, &c. The naval department of the Board of Trade has general powers to carry out the laws regulating *steam navigation*. Surveyors appointed by the Board examine all passenger steam vessels, except foreign-going vessels and those carrying mails. The surveyors report as to the sufficiency of the hulls, machinery, and boats of the vessels examined by them, and on the reports are founded certificates of the Board, stating whether the vessels are fit for sea-service or for river-service, and limiting the localities within which they are to ply, and the number of their passengers.

By the Act 16 & 17 Vict., cap. 129, the Board of

Trade has various powers with respect to the regulation of payments to pilots, their examination and certificates of qualification, and the collection of various returns and accounts relating to pilotage which are to be submitted to Parliament.

The *Statistical Department* of the Board of Trade has been established for the purpose of collecting and arranging documents of a statistical nature, which the Government, in its several departments, has the means of procuring. These statistics are of very high value for the purpose of exhibiting the extent of the revenues, commerce, manufactures, and material resources of the kingdom, and of affording the bases of legislative enactments, affecting various branches of trade. The Board of Trade, in collecting statistics, avails itself, not only of official information, but of that which can be obtained by voluntary private communications. By circulars addressed to clergymen, parochial authorities, and others, the Board has, from time to time, endeavoured to supply the defects of agricultural statistics, of which the collection, however, appears very incomplete, and subject to peculiar difficulties.

The Comptroller-general of corn returns, an officer of the Board of Trade, is required under the Tithe Commutation Acts to publish annually, in the "London Gazette," the average price of corn during the preceding seven years, computed from the weekly returns.

The *Registration of Designs* is assigned to another

department of the Board of Trade. The copyright in new and original designs for the shape or pattern of works of art and manufactures, is protected by this registration, and the Board has various powers with respect to the extent and duration of the protection afforded. Under the same superintendence are also the metropolitan school for science applied to mining and the arts, the mining records' office, the office of geological survey, the museum of Irish industry, and the Government schools of design, which afford instruction in the decorative arts and their application to works of manufacture.

The power of inspection and control in the construction of *railways* is vested in the Board of Trade. The railway department includes inspectors of railways, who are required to report on the sufficiency of the works and stock of railways before they are opened, and upon the causes of accidents occurring upon them. The fares and bye-laws of the railway companies are subject to the control of this department.

The Committee of the Privy Council on *Education* distributes to various schools for the education of the poor, sums of money voted by Parliament for the purposes of education. The Government of this country has not hitherto assumed to itself the task of directly undertaking the establishment of schools for the poor, but has chiefly contented itself with affording aid to schools instituted by private charity.

There is, perhaps, no other country in which benevolent persons and charitable societies have contributed so largely to the maintenance of places of education which are kept up from religious and philanthropic motives. The institution by Government of a general compulsory system of education, is rendered extremely difficult on the one hand by the public opposition to a national system of secular education not combined with religious instruction; and on the other, by the very jealous dislike on the part of various religious denominations, to religious instruction not conducted by themselves. The whole question of national education is consequently embarrassed with conflicting political exigencies, which have hitherto rendered all efforts for its complete solution unavailing.

The only kinds of compromise between the opposing demands for religious education on the one hand, and for education free from the imputation of sectarian bias on the other, which appear to be practicable, are, firstly, government-aids to schools of all religious denominations indifferently; secondly, a system of religious instruction so general as to exclude the subjects of sectarian tenets. The former system is partially adopted in England, and the latter in Ireland.

The schools aided by the grants distributed by the Committee of Education are of two kinds; 1. *Normal*, or Training schools, which prepare persons for the office of schoolmaster; 2. *Elementary* schools. The

grants of the committee to the schools have usually been in the proportion of about one-third the amounts expended on them respectively, from local contributions or the grants of voluntary societies; but the amount of the grants is also conditional on the efficiency of the schools, and the outlay upon books and apparatus used in them. A considerable part of the contributions by the Committee of Education, is made for the erection of school-buildings, schoolmasters' houses, workshops, and wash-houses. Grants are also made by the Committee for the supply of books to the schools aided, which are chiefly in connection with the Church and various religious bodies.

The connection of the schools with the Government is purely voluntary on the part of the managers of them; but so long as that connection is continued, the schools must be subject to Government inspection. The inspectors are selected by the Committee of Education, with the concurrence of the religious bodies whose schools are inspected; but to avoid religious jealousies, the inspectors who are members of the Church of England, confine their attention to Church schools exclusively.

In the training, or normal schools, the curriculum of instruction is, of course, the most extensive, as the persons educated there are required, not merely to be informed in the various branches of knowledge which they are afterwards to communicate in elementary schools, but also to possess a superior amount of

knowledge, and to be versed in the art of instructing and managing of scholars. The candidates for the offices of schoolmasters are examined by the inspectors, and when approved of receive certificates which are of the nature of diplomas of merit, and entitle the recipients to augmented salaries.

The Elementary schools, besides the ordinary scholars, contain others who are entitled "pupil-teachers," or monitors, who are bound to their schoolmasters as apprentices by indentures, which require the masters to give them additional instruction daily, after or before the usual school hours. The "pupil-teachers" are subject to examination by the inspectors, and receive stipends if the results of their examination be satisfactory. The examinations by the inspectors are conducted publicly, partly orally, but chiefly in writing. The reports of the inspectors and the examiners' papers are transmitted to the Education Committee for review by an examiner appointed for the purpose, and on his final statement the distribution of stipends is founded. The sum placed by Parliament at the disposal of the Education Committee of the Privy Council, varies from year to year. Previously to the year 1839, this annual grant was distributed by the Treasury, but as from the multifarious nature of its duties, it could not pay sufficient attention to this business, the Treasury was relieved from it by the appointment of the Committee of Education.

CHAPTER XXXI.

THE SECRETARIES OF STATE.

THE Secretaries of State are the general immediate agents of the Crown in the exercise of its administrative public powers. The jurisdictions of the Royal prerogative may be regarded as either internal or external—internal as affecting the servants of the State or its property—external as affecting subjects and others who are not in the State service. The external or public power is exercised by the sovereign, either personally, as in Council, or by delegation. In the latter case, the Secretaries of State are her general immediate agents. There are other administrative agents of the Crown—as the Lord Lieutenant of Ireland, the Lord Commissioner to the Church of Scotland, Ambassadors, Governors of Colonies, and the Lord Chancellor—but their agency is not immediate and general: they have only local jurisdiction or generally receive instructions mediately through Secretaries of State.

As the name implies, the Secretary of State was

originally one who conducted the king's private correspondence. The Secretary had the custody of the king's *signet* used in sealing his private letters, and all such grants as were superscribed by the Royal sign manual. The sign manual or signature of the Queen is usually written on the upper left-hand corner of the instrument, and countersigned by an officer of State. When attached to certain instruments, the Royal sign manual is required to be accompanied by the privy seal; and this authorises the affixing the *great* seal by the Lord Chancellor or keeper of the great seal. Recently, many formalities respecting the privy signet and privy seal, and of the offices connected with them, have been abolished.* The Secretaries of State have custody of the privy signet, and receive their appointment by delivery of the seals by the sovereign into their hands.

The office of Secretary of State is very ancient. Of its history and growth an interesting and learned account is given by Lord Camden, Lord Chief Justice

* By 14 and 15 Vict., c. 82, the *simplified* process of appointment to certain offices (as those held at the pleasure of the Crown), and of passing grants under the Great Seal consists of *five* stages:—(1) A warrant prepared by the Attorney or Solicitor-General; (2) is transmitted for the Royal signature; (3) is transferred to the Home Office for the counter signature of the Secretary of State; (4) is sent to the Privy Seal Office for sealing there; (5) finally reaches the Great Seal Office where Letters Patent according to the tenor of the warrant are prepared and passed under the Great Seal.

of the Court of Common Pleas, in an elaborate judgment in the case of *Entick v. Carrington*,* in which the question was tried whether a Secretary of State had the power of commitment to prison, which it is now decided that he has. Lord Camden considers his office to have been originally a very subordinate one, and attributes the growth of his importance to his intercourse with ambassadors, and the management of the foreign correspondence of the State after the policy of having ministers resident in foreign courts was established in Europe. Lord Camden says, "This officer is, in truth, the king's private secretary. He is keeper of the signet and seal used for the king's private letters, and backs the sign manual in transmitting grants to the privy seal. This seal is taken notice of in the *articuli super chartas*, cap. 6, and my Lord Coke, in his comment, (2 Inst. 356), describes the Secretary as I have mentioned. He says he has four clerks that sit at his board, and that the law, in some cases, takes notice of the signet, for a *Ne Exeat Regno* may be commanded under privy seal. He is mentioned in the statute 27 Hen. VIII., chap. 11, and in the statute of the same king touching precedency, and it is observable that he is called, in these two statutes, by the single name of Secretary, without the addition which modern times have given him of the

* XIX. Howell. State Trials.

dignity of a State officer. I do not know, nor do I believe, that he was anciently a member of the Privy Council."

Lord Camden adds that the Secretary is not a magistrate known to the common law, and refers to a remark of Clarendon, who, when describing the chief ministers of State, at the beginning of the reign of Charles I., mentions the two Secretaries of State "who were not in those days officers of that magnitude they have been since, being only to make despatches on the conclusion of councils, not to govern or preside in those councils."

The Secretaries of State are always members of the Privy Council and of the "Cabinet." Their offices are so far considered one, that on removal from one to the other, a Secretary of State, who is a member of the House of Commons, does not vacate his seat, and each Secretary of State is capable of performing the business of the others. The number of Secretaries has varied from time to time, but were, until lately, three; the duties being divided into three classes—1. Home Affairs; 2. Foreign Affairs; 3. Colonial Affairs and War; their offices being termed the Home, Foreign, and Colonial offices respectively. Recently the two functions of the latter office have been separated, and the number of Secretaries of State is now four.

Each Secretary of State has two under secretaries,

one of whom usually holds his office permanently, and the other during the tenure of office of the principal secretary, who resigns on the dissolution of the "Cabinet" of which he is a member.

HOME OFFICE.

The functions of this office are—(1) prerogative ;
(2) statutory.

(1) To the Secretary of State for the Home Department belongs the maintenance of peace in Great Britain so far as the general immediate delegation of the Royal prerogative is concerned. All commissions of the peace pass through his office, and he receives communications from magistrates and others on matters affecting the tranquillity and prosperity of the various parts of the country in which those persons are locally interested.

In the office of the Secretary of State for the Home Department is conducted the correspondence with the lords-lieutenants of counties, and other officers of local government, who communicate with the Secretaries on the domestic interests of the country. The Home Office maintains a correspondence with the Lord Lieutenant of Ireland, the Lord Justice Clerk of Scotland, the Lieutenant-Governor of Jersey, &c., respecting matters of provincial importance.

The Royal prerogative of Pardon is exercised on the advice of the Home Secretary, founded on the

recommendations of the judges on private representations, and inquiries into the nature of the evidence on which a prisoner has been convicted. The magistrates and justices of the peace, appointed by commission from the Crown, are removable usually by the advice of the Home Secretary, who has also the general control of militia, yeomanry, and volunteers.

An important branch of the Home Department is the providing that returns be made which are required for Parliament, from departments or persons subject to the authority of the Home Office. The various Commissions of Inquiry which, as has been mentioned, are appointed by the Crown, from time to time, for the examination of the state of public institutions, branches of the law, and the condition of classes of the people, are prepared at the Home Office, and the correspondence of the executive government with these commissioners is there conducted.

In the same department are prepared instruments requiring the Royal signature, being appointments to offices in this country, military commissions, except those in the Indian or colonial service, ecclesiastical appointments, creations of peerages, inventions, charters, &c. These are countersigned by the Secretary of State. All grants, warrants, patents, and licenses of the Crown, except a few which relate to the Treasury, Colonial, and Foreign departments, are prepared in the Home Office.

(2) The authority by which the functions above described are exercised, is directly or indirectly derived from the Royal prerogative. Besides the powers so conferred, the Secretary of State for the Home Department has various *statutory* powers and duties. In Acts of Parliament, however, it is not usual to distinguish between the Secretarial departments, and the powers and duties referred to are assigned to "one of her Majesty's principal Secretaries of State."

The establishment of county and district constabulary is subject to his approval, as are also the rules for the pay and equipment of the rural police. The rules of all prisons and the penal discipline of all convicts are under the supervision of the Secretary for the Home Department.

Under the Prisons' Regulation Act (5 & 6 W. IV. c. 38), inspectors are appointed by a Secretary of State to visit and inspect every place of confinement of prisoners in Great Britain, and to inquire into all matters connected with the management and discipline of such prisons. These inspectors periodically report to the Home Secretary on the condition of all prisons and hulks. He also has the power of making the regulations under which witnesses and others are allowed the expenses attending criminal prosecutions.

Inspectors of mines and coal-mines are appointed to visit collieries and mines, and examine their works, machinery, and ventilation. The reports of these

inspectors are received by the Home Secretary. He supervises the bye-laws relating to public baths; appoints inspectors of factories, who examine the condition of, and report on the observance of, the laws relating to factories; has a general control of the Office for Registration of births, deaths, and marriages, of the metropolitan police courts, and police, and has many other administrative functions connected with the internal economy of the country.

FOREIGN OFFICE

The Royal prerogative in international affairs, like other branches of the Royal prerogative, is exercised by the Queen, either personally or by delegation. The nature of the Royal prerogatives, relative to the declaration and conclusion of war, embargoes, blockades, treaties, embassies, alliances, and passports, has been described in a preceding chapter. Of these prerogatives, many are exercised by the advice of the Privy Council, as was more particularly mentioned in the chapter relating to the administrative functions of that body. In the exercise of other international prerogatives, the Secretary of State for Foreign Affairs is the general immediate agent of the Crown.

The Secretary for Foreign Affairs is principally responsible for the negotiation and conclusion of foreign treaties which are entered into by the sole

exercise of the Royal prerogative. He investigates and requires the necessary redress of grievances of British subjects resident abroad, and is charged with the duty of seeing that treaties and international laws affecting this country are observed by foreign powers. He corresponds with and receives despatches from British ambassadors, ministers, and consuls resident abroad; and communicates, personally, with the representatives of foreign powers resident in this country. He recommends to the Crown ambassadors, ministers, and consuls to represent Great Britain abroad, and countersigns the warrants for their appointments. The Foreign Secretary grants passports to British subjects and naturalised foreigners.

All matters of diplomatic expenditure, and claims by ministers abroad, are under the cognisance of the Foreign Office, which transacts also all business relating to the privilege and immunities of foreign ministers in England, and the office of British consuls abroad. The Foreign Office also has the duty of giving effect to the laws and treaties for the suppression of the Slave Trade.

The largest part of the transactions of the Foreign Office consists in diplomatic correspondence, and the receipt, transaction, analysis, and record of despatches from abroad. The extreme secrecy which is very commonly supposed to be necessary in diplomacy, is well observed at the Foreign Office, and is

cited as an evidence of the efficacy of that establishment.*

In his evidence before a Committee of the House of Commons on Official Salaries in 1850, Lord Palmerston stated that the purpose of despatches from a minister or ambassador abroad is not so much to state occurrences as to convey information of the disposition and intentions of the Government with which he is in relation. Lord Palmerston is also of opinion that the intercourse between England and France could not be kept up by written communications only, and that great advantages arise from personal intercourse by ambassadors, and from the influence which they exercise by means of hospitalities to persons of high rank. He considers that the importance of diplomatic agents is greater now than formerly, because there is less secrecy than formerly in the affairs of foreign countries, and such agents acquaint foreign governments with the nature of public opinion in this country.

The business of the Attachés of legations consists in transacting business connected with passports, the writing despatches, and the entering despatches on the records of the legation. The despatches between London and Paris are transmitted about twice a-week. Many despatches sent from other places through

* Report on Miscellaneous Expenditure to the House of Commons, 1848.

Paris are sent under "flying seals," that the ambassador there may inform himself of their contents. The number of despatches sent out from the Foreign Office to all parts of the world, was 10,760 in the year 1829, and 30,735 in the year 1849. In another part of his evidence, Lord Palmerston, whose estimate of the value of diplomatic services seems to have exceeded that of some members of the Committee, stated it to be his opinion that all the foreign missions and embassies are necessary—that they are "the eyes, the ears, and the tongue by which the British Government sees, hears, and speaks in regard to its foreign relations." They sometimes discharge the offices of hands also; for it appears from Lord Palmerston's evidence, that their activity has not been always confined to the diplomatic relations between Great Britain and the countries in which they are resident.

The Committee before which the evidence above referred to was given, decided to recommend to Parliament "a complete revision of the present system of our diplomatic establishments." In this Committee reference was made to a supposition that in diplomatic appointments, family or personal interest was more regarded than the public service. Lord John Russell, in answer to the question whether he was aware that foreign appointments were not always given with the same regard

to the public interest with which appointments here have been, replied, "I should not say that generally ; —there may have been particular appointments which were objectionable." Lord John Russell adds that, in his opinion "the former way in which the diplomatic service was conducted—of appointing persons from time to time from this country, who were men of good information and competent to give an opinion upon foreign politics—was a better way of conducting the diplomatic service, than making it a regular profession, as it has been."

The nature of the responsibility of the Secretary for Foreign Affairs may be partly understood from the following passage in a letter by the Queen, read by Lord John Russell in the House of Commons, February 3rd, 1852. The Queen required first, that the Secretary for Foreign Affairs should "distinctly state what he proposes in a given case, that the Queen may as distinctly know to what she is giving her Royal sanction. Secondly, that having once given her sanction to a measure, it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and foreign ministers before important decisions are taken, based upon that intercourse ; to receive the foreign despatches in good

time; and to have the draughts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off."

The political effects of the powers and duties assigned to the Secretary for Foreign Affairs, and the nature of the functions of ambassadors, will be more particularly considered hereafter, under the head of International Government.

COLONIAL OFFICE.

The Secretary of State for the Colonies is the organ of communication between the Government of this country and the colonial governments. The larger colonies have, generally, local legislatures, of which the members are appointed partly by the Crown and partly by popular election; and in the colonies which have not Legislative Assemblies, there are generally Executive Councils, possessing authority to pass ordinances which have the effect of colonial laws. The Constitutions of the different colonies will be more particularly considered under the head of Colonial Government. In all the colonies are Governors and other executive officers, appointed by the Crown; and the Colonial Secretary has the general duty of advising the Crown with respect to such appointments.

- The Secretary for the Colonies issues instructions to these executive officers upon all matters of colonial

government which are left to the decision of the Administrative Government in this country. All the correspondence with the Governors of the colonies with respect to the Acts of Colonial Legislatures, the allowance or disallowance of those Acts by the Queen, the management of transported convicts, and generally all the colonial affairs over which the Government at home exercises control, is conducted in the Colonial Office. The Secretary for this department is the general immediate agent of the Crown in the exercise of all those prerogatives affecting the colonies which are not exercised by the Queen in Council. He determines the number of troops to be stationed in each colony, and instructs the Master-General of the Ordnance respecting the fortifications to be erected and maintained in each.

To the Secretary for the colonies is usually assigned the principal responsibility of devising and submitting to the Imperial Parliament, laws peculiarly affecting the colonies—such as enactments constituting colonial legislatures, or regulating the sale of Crown lands in the colonies, and enactments respecting the protection of emigrants.

All Acts of the Colonial Legislatures may be disallowed within a limited time by the Crown, and must be not repugnant to the laws of England. All colonial enactments and ordinances are, therefore, examined in the Colonial Office, and the results

of such examinations are reported to the Colonial Secretary.

The Board of Trade and Foreign Plantations, as has been already mentioned, formerly transacted business, which was subsequently transferred to the Secretary for the Colonies. The colonial business of that Board never, however, wholly ceased, and has recently been increased. The discussion of measures effecting constitutional changes in certain colonies, and the determination of controversies between colonial officers, have been intrusted to this Board, with the assistance of the Colonial Secretary.

The *Colonial Land and Emigration Board*, which is a department subordinate to the Colonial Office, advises on the sale and lease of Crown lands in some colonies, and enforces the provisions of the Acts passed for the protection and aid of emigrants. In some colonies unoccupied lands belonging to the Crown are from time to time divided into lots and sold, either at a fixed rate or by public auction, with a reserved upset price, and a large part of the produce of the sales is applied to promote the purposes of emigration, under the general direction of the Emigration Board, who, in accordance with advice from the Colonial Government, select emigrants and charter vessels for their conveyance.* The Passenger Acts,

* Land Sales' Act, 1846 (9 and 10 Vict., c. 104), and orders in Council founded on it relating to Australia.

which relate chiefly to the conveyance of emigrants, are executed by the Colonial Councils and this Board, subject to the authority of the Colonial Secretary. Under these Acts, emigration agents are appointed in London and the outports, and powers are given to these emigration officers to inspect passenger ships, to see that they are properly constructed and ventilated, and have adequate provisions for the diet and health of the passengers.

The Secretary of State for War (whose office was until lately united with that of Colonial Secretary) has important functions respecting military affairs, of which the consideration may be conveniently postponed to the chapter relating to Military and Naval Offices.

CHAPTER XXXII.

THE FISCAL ADMINISTRATIVE OFFICES.

THE fiscal administrative offices, of which the nature is here to be considered, are those which regulate *disbursements* of the national revenue.

The *Treasury* has, of all the administrative offices, the most extensive duties. It controls the management and expenditure of the national revenue, and all the offices which superintend the collection of it. Also all the other civil offices are, with respect to their expenditure, under the control of the Treasury, which has also important duties with respect to the distribution of Government patronage.

The Lords of the Treasury are *Commissioners* appointed for executing the ancient office of *Lord High Treasurer*, who had charge of all the king's wealth in his exchequer. During the reign of Queen Anne the Lord High Treasurer was sometimes appointed as in former reigns, and sometimes the office was "put in commission." Since the end of that reign the Treasury has been always "put in commission." The Lords of the Treasury are—the First Lord (who

is considered the highest officer of the Administrative Government, and is usually the person popularly designated "Prime Minister"), the Chancellor of the Exchequer, and the Junior Lords, who may sit in Parliament. There are also two secretaries, usually members of Parliament, and an assistant secretary.

Anciently, the Treasury Boards were held in the royal presence, the sovereign sitting at the head of the table, about which sat the Lords of the Treasury. Formerly the First Lord frequently held, besides his own office, that of Chancellor of the Exchequer and other offices, of which that of Warden of the Cinque Ports was often one. The statute 59 Geo. III, c. 98, consolidated the offices of the Lords High Treasurers of Great Britain and of Ireland, and provided that the Crown might, by letters-patent, appoint Commissioners of the Treasury for the United Kingdom. It was also enacted, that all officers employed in collecting or managing the public revenues should be, "in all respects, subject to the control of such Lord High Treasurer or Commissioners of His Majesty's Treasury." The Treasury Board is rarely attended by the First Lord or the Chancellor of the Exchequer.

The functions of the Treasury may be divided into these three principal branches :—1. The national income ; 2. The national expenditure ; 3. Patronage.

1. The public offices under the especial superintendence of the Treasury in its capacity of controlling

the national income, are those which collect the civil *revenue* from public sources,—the Boards of Customs, Inland Revenue, Woods and Forests, and the Post Office. The Commissioners of Customs are subject to the control, authority, and directions of the Lords of the Treasury, to whom there is an appeal from the decisions of the Board of Customs, upon applications and complaints relating to business of that department. The appointment of officers of the Customs is subject to the authority of the Treasury. The office of Inland Revenue, in a similar manner, receives instructions, and is under the general control of the Treasury. The office of Woods, Forests, and Land Revenues, now discharges many of the duties which formerly devolved on the Treasury, with respect to Crown lands, but acts under the general authority of the Treasury. To the Commissioners of the Woods, Forests, and Land Revenues, separate duties may be assigned by the Treasury. Without the sanction of the latter department, no sales, purchases, nor exchanges of Crown lands may be made. The Post Office is also subordinate to the Treasury; and the establishments of colonial and other posts are subject to its approval with respect to their expenses. The Treasury may be also appealed to from the decisions of other departments with respect to the receipt of public revenue, and for the remission of fines, estreats, and forfeitures to the Crown. The chief functions

relating to the revenue are discharged by the parliamentary secretaries. The examination of the civil list, and of private bills affecting the royal revenue, is assigned to the auditor of the civil list

Connected with the duties of the Treasury, relating to the protection of the public revenue, is the conduct of prosecutions for offences against the Revenue Laws. These prosecutions are conducted by the Solicitor to the Treasury, who acts also as solicitor to some other departments. The commutation of punishments for offences against the Revenue Laws is usually determined according to the recommendation of the Junior Lords of the Treasury.

2. The Treasury, in the exercise of its duties relating to national expenditure, has control over every other administrative department. Every payment from the Consolidated Fund for the public service must be authorized by the Treasury; and this authority is expressed by *warrants* sent from the Treasury to the Exchequer in a manner hereafter explained in the notice of the latter department. The supply for the army granted by Parliament is issued by the authority of the Lords of the Treasury, who authorize the Exchequer to place to the credit of the Paymaster-General at the Bank of England the sums required for military expenses. In a similar manner, the expenses of the Commissariat, the Ordnance, the Admiralty, and all the departments of the civil service,

are under the authority of the Treasury; which also regulates the salaries of newly-created offices in those departments. Other duties of the Treasury consist in the examination of the expenses of legal establishments, Sheriffs, the County Courts, and criminal prosecutions.

The part of the duties of the Treasury which relate to expenditure are chiefly discharged by the assistant secretary. The business relating to the Woods and Forests, and to the extensive patronage of the Treasury, is conducted by the "patronage secretary."*

Comparatively light and unimportant duties, of which many are of a formal nature, are discharged by the Junior Lords. Two of them constitute a committee to consider claims for superannuation allowance by persons in the civil service, and to carry into effect the Superannuation Act. By 12 and 13 Vict., c. 89, the number of Junior Lords being reduced to three, instruments signed by two Commissioners were rendered valid. The Junior Lords of the Treasury rank higher in that office than the Parliamentary Secretaries, but perform far less important duties.

3. The civil and ecclesiastical patronage of the First Lord of the Treasury is very extensive. The church patronage of the Crown (with the exception

* Evidence before the Committee on Miscellaneous Expenditure, 1848.

of that which belongs to the Lord Chancellor) was stated by Sir Robert Peel* to be virtually disposed of according to the advice of the First Lord of the Treasury—and to include all archbishoprics, bishoprics, deaneries, and Crown livings. With regard to civil patronage, a great part belongs to the First Lord of the Treasury, but the patronage of the other departments is considerable. The diplomatic appointments are disposed of immediately on the advice of the Secretary for Foreign Affairs; but on all important appointments he would confer with the First Lord of the Treasury. The colonial patronage is exercised by the Secretary of the Colonies in the same way. The number of Crown livings is about 950. Of these, about 700 are stated by Lord John Russell, in his evidence before the same Committee, to be disposed of by the Lord Chancellor without taking the pleasure of the Crown; of the remainder of these the "Prime Minister" has the disposal, but he never disposes of any living, except those which are very small, without taking the pleasure of the Crown.

Paymaster-General.—All civil salaries, allowances, and incidental charges, are paid upon the special authority of the Treasury by the Paymaster-General, who is now, by the 11 and 12 Vict., c. 55, paymaster for all civil services in England. In his office, by 5

* Evidence before the Committee of the House of Commons on Official Salaries, 1850.

and 6 Will. IV., c. 35, the duty of making all payments for the army, navy, ordnance, &c., are consolidated.

Office of the Exchequer.—At present, Mr. Lawson* observes, the Chancellor of the Exchequer may be said to be the grand Receiver-General, and the First Lord of the Treasury, commonly called "Premier," the grand Paymaster-General of the nation. In effect, the modern Treasury is the ancient Exchequer. In former times, indeed, the Exchequer was literally the *bank* of the Lord High Treasurer. This business is now done at the Bank of England, of which some of the principal clerks attend daily at the Exchequer to regulate the money business of the Treasury.

As the Treasury and the Exchequer are both departments which deal with the general public revenue, the distinction between them is not always apprehended. The distinction is this—The Treasury, as a fiscal department, controls the management and expenditure of the public revenue. The Exchequer, on the other hand, is the department to which is intrusted the office of seeing that no issues of the public money are made by the Treasury without proper authority, and that the issues made by authority of Acts of Parliament are made in conformity with those Acts.

* History of Banking, p. 18.

In the Chapter on Supply and Ways and Means, I have explained that the national expenditure consists partly in payments out of the Consolidated Fund, secured by various Acts of Parliament of permanent operation, and partly in annual grants which are voted in the House of Commons in the Committee of Supply. When the supplies for the service of the year have all been voted, a Bill is ordered to carry the votes into effect. This Bill, into which an appropriation clause is introduced, is entitled the "Consolidated Fund (Appropriation) Bill," and enumerates every grant of the session, authorizes the issue and application to each service of the sums so granted, and directs that the supplies shall not be applied to any purposes but those specified, or for other payments directed to be satisfied by any Acts of Parliament.

The department of the Exchequer is bound to see that the public money is thus applied to its proper purpose by the Treasury. Another duty of the Exchequer is to issue and pay off Exchequer Bills which are authorized by the Committee of Ways and Means, to be issued as a means of anticipating for short periods the annual revenue, and are paid off by sums voted for the purpose by the Committee of Supply. The discharge of Exchequer Bills as they become due, is under the management of certain officers of the Exchequer department, who are called

Paymasters of Exchequer Bills. These Bills constitute the principal part of the *unfunded debt*, and are partly discharged by the issue of new Bills, or by an equivalent amount of Stock.

Considerable changes were made in 1834 in the constitution and duties of the Exchequer Office by the Act 4 & 5 Will. IV., c. 15, which carried into effect various improvements recommended in the Report of two Royal commissions appointed in 1830 and 1831 to inquire, the former respecting the charges of collecting the revenue, &c., the latter to inquire respecting the practice of the Exchequer with respect to the receipt and payment of the public money, and the mode of keeping the accounts thereof. By this Act, which is entitled an Act to regulate the office of the receipt of His Majesty's Exchequer at Westminster, the offices of auditors, tellers, clerk of the pells, and others, were abolished, and a new establishment substituted, to consist of a *Comptroller-General* of the receipt and issue of His Majesty's Exchequer, an assistant-comptroller, a chief clerk, and other clerks and assistants. The Comptroller is appointed under the great seal, holds his office during good behaviour, and performs his office in person. All public moneys previously payable into the Exchequer, are required to be paid into the Bank of England to the credit of the Exchequer. With such moneys is delivered a specification of the

particulars of them. This specification is in duplicate and countersigned by the Comptroller, and one copy of it is kept by the cashier of the bank, and the other, vouched by him, is returned to the payer, in order to his obtaining an acquittance from the Comptroller.

All moneys paid into the Bank of England on account of the Exchequer, form one fund, from which are to be satisfied all warrants or orders of the Comptroller for credits of money for the public service.

When any sums have been voted or granted for public service, and ways and means granted for satisfying them, an order may issue under the sign-manual, countersigned by the Commissioners of the Treasury, requiring the Comptroller to place at the Bank of England the amounts of such sums to the credit of the public accountants to the Crown in the respective branches of public service. The Comptroller must satisfy himself that such order is in conformity with the grant of Parliament.

The Treasury issues *warrants* to the Comptroller to transfer sums from the general fund of the Exchequer at the Bank to the credit of the several officers who make payments on account of the public departments. The Treasury warrant must recite the Royal order on which it is founded. Thereupon, the Comptroller, having satisfied himself that the Treasury

warrant is in conformity with the Royal order, issues an Exchequer warrant authorizing the Bank of England to grant such credits.

Where, however, parliamentary grants are charged upon the Consolidated Fund, or upon public moneys specially appropriated, the Treasury warrants are issued without Royal order, and recite the Acts of Parliament by which such sums are charged and appropriated.

The Comptroller lays before Parliament, annually, an account of all moneys received to the account of the Exchequer under the several heads of public revenue — the amounts of the Royal orders and Treasury warrants—the issues made by the Bank on his credits—and the balance at the Bank to the credit of the Exchequer. This account must be accompanied by a certificate of the chief cashier of the Bank as to the balance.

The *Bank of England*, in its public capacity, which alone we have here to consider, transacts the whole of the banking business of the English Government. This business is of two kinds. *Firstly*, the Bank undertakes the receipt of the public moneys paid into it by the different revenue departments, and makes disbursements out of such money to the different departments of the State on the authority of the Exchequer. The nature of this department of the Bank has been already considered. *Secondly*, it has

the duty of paying the annuities, dividends, and interest due on account of the public debts.

The public debts are of two kinds—(1) funded and (2) unfunded. 1. When the exigencies of the State have required the loan of a larger sum of money than can be speedily repaid from the annual taxation and other regular sources of revenue of the State, it has been usual to provide for such exigencies by borrowing the requisite sum, for which the equivalent given by the State is a stipulated amount of *stock* which entitles the holders to an annuity either terminable at a *remote* period or more frequently made *perpetual*. This stock is transferable in various portions, and constitutes the National or Funded Debt, and the dividends (or annuities proportional to the portions held by each of the fundholders) are paid to them by the Bank of England on behalf of the State. 2. Where the sum borrowed by the State is intended to be paid off within a *short period*, the loan is now most frequently secured by Exchequer Bills or Bonds, of which the interest is also paid at the Bank of England. In the technical language of public finance, however, the word “loan” is restricted to *funded* debt. Exchequer Bonds are repayable in a few years after their issue; Exchequer Bills within a shorter period. The latter bears interest *per diem*, and twice every year new bills are exchanged for those which are outstanding.

Each debt, funded and unfunded, must be authorised by Acts of Parliament. Generally Exchequer Bills are authorised for such an amount as it is estimated will suffice to defray public expenses until the revenue is collected.

The Bank of England transmits daily to the Comptroller of the Exchequer an account of the payments made each preceding day on account of the credits granted by him, and sends weekly accounts to the Treasury of the sums paid to the drafts or orders of the several public accountants to whom such credits were granted. Temporary advances are made by the Bank to the Government on Exchequer Bills, which, for that purpose, are termed "deficiency bills," and are paid off as the revenue accrues.

The Treasury may, from time to time, establish rules for keeping the accounts of the several departments of the revenue with the Bank of England, and for the payment of the public moneys collected by such departments to the account of the Exchequer.

The Audit Office.—The Comptroller of the Exchequer transmits quarterly to the commissioners for auditing the public accounts, a statement of all payments into the Bank to the Exchequer account, of all the credits granted by him, and of all moneys drawn by public accountants as certified by the Bank. The accounts of all the civil and military government offices are thus subjected to examination at the

Audit Office. The commissioners of that office report the balance of each account, and give a formal acquittance on the declaration of the balance due at the termination of each period, for which the accounts have been audited.

The Commissioners for the *Reduction of the National Debt* are the Chancellor of the Exchequer, the Speaker of the House of Commons, the Master of the Rolls, the Chief Baron of the Court of Exchequer, the Accountant-General of the Court of Chancery, and the Governor and Deputy-Governor of the Bank of England. Most of these Commissioners take no part in the business of the office, which is principally managed by permanent officers, viz., a Comptroller-General, secretary, actuary, and clerks, under the control of the Chancellor of the Exchequer, assisted by the Governor and Deputy-Governor of the Bank of England. The Commissioners annually apply one-fourth of the surplus income of the country to the reduction of the national debt, and are also empowered to grant annuities either for *lives* or for *years*; the price paid for such annuities by the holders of them being equivalent portions of national debt (Consols) given up to be cancelled. As the present value of an annuity for one hundred years differs little from the present value of a perpetual annuity, the conversion of stocks, which are of the nature of perpetual

annuities, into the terminable annuities above mentioned, is theoretically a very economical way of gradually reducing the national debt; but operations for such conversions have not been very extensive on account of the unwillingness of the majority of fundholders to accept terminable annuities in lieu of permanent stock.

The Commissioners for the Reduction of the National Debt supervise the accounts of savings' banks, and have a fund standing in their names in the Bank of England, in which the deposits of the savings' banks are required to be invested. The Commissioners present annually to Parliament accounts of their operations with respect to the national debt, and also with respect to the savings' banks.

CHAPTER XXXIII.

MILITARY AND NAVAL OFFICES.

THE jealous protection of national liberty provided by the British Constitution, is nowhere more conspicuously displayed than in the laws regulating the maintenance of the military and naval forces of this kingdom. That the Executive power must be supported by an armed force adequate to resist disaffection at home, or foreign hostility, is indisputable : on the other hand, it is equally clear that such force, unless subject to the control of the supreme Legislature, might be employed, not to protect, but to subvert national liberty. A Constitution which makes no provision for such control of the army and navy has this grand defect, that it omits precautions necessary for its own stability. At first sight it appears by no means easy to reconcile the two conflicting conditions required for the proper constitution of military forces—their absolute and unquestioning

obedience to Executive, on the one hand—constitutional control by the Legislature on the other. The one condition is necessary to the effectiveness of the army and navy, the other to the liberty of the people. We shall see how admirably these conflicting conditions are reconciled by our Constitution, of which, perhaps, the most excellent characteristic is, that a scrupulous forbearance to invade the Royal prerogative ever accompanies provisions against its tyrannical exercise.

It is obvious that the liberties of the nation are much less liable to attack by a naval than by a military force. The former, invaluable as a means of external defence, but being inefficient for inland operations, is almost incapable of being used as a means of coercing the greater part of the people. Accordingly, the Navy is much less jealously controlled by Parliament than the Army; for the Navy is by law permanently established, while the power of maintaining an army has only a temporary duration, subsists from year to year, and is annually renewed by Act of Parliament.

The Act of Parliament by which the Crown is annually authorized to maintain a specified number of troops is entitled "An Act for punishing Mutiny and Desertion, and for better payment of the army and their Quarters." This Act, which limits the duration of the army to one year, is known generally

by the brief title of the Mutiny Act. It has been annually renewed from the time of the Revolution to the present, with the exception of an interval from 1697 to 1702. The Act is now scarcely ever altered in any particular from year to year, excepting that in each annual Act the number of forces to be maintained for the ensuing year is specially mentioned. Nothing can better illustrate the constitutional principles above referred to than the preamble of the Act itself, which, carefully premising that no man can be forejudged of life or limb otherwise than according to the established laws of the realm, yet authorizes the constitution of courts-martial for military offences; and in order not to invade the Royal prerogative by which the Crown has the sole power of raising an army, avoids assuming that power to Parliament, but simply recites the number of troops which it is expedient to raise during the current year, tacitly leaving the raising them to the Executive. This preamble of the "Mutiny Act" is well worth considering, on account of its constitutional importance. It is as follows for the year 1853:—

" 16 Vic. cap. 9. An Act for punishing Mutiny and Deserters, and for the better payment of the Army and their Quarters.

" Whereas, the raising or keeping a standing army within the United Kingdom of *Great Britain and*

Ireland in time of peace, unless it be with the consent of Parliament, is against law ; and whereas, it is adjudged necessary by Her Majesty and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom, the defence of the possessions of Her Majesty's Crown, and the preservation of the balance of power in *Europe*, and that the whole number of such forces should consist of one hundred and two thousand two hundred and eighty-three men, exclusive of the officers and men belonging to the regiments employed in the territorial possessions of the *East India Company*, but including the officers and men of the troops and companies recruited for those regiments ; and whereas, no man can be forejudged of life and limb, or subjected in time of peace to any kind of punishment within this realm by Martial Law, or in any other manner than by judgment of his peers, and according to the known and established laws of this realm ; yet, nevertheless, it being requisite for the retaining all the before-mentioned forces in their duty, that an exact discipline be observed, and that soldiers who shall mutiny or stir up sedition, or shall desert Her Majesty's service, or be guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow : ”

The Act proceeds to make various provisions for the constitution and conduct of courts-martial and the punishment of military offences.* When sentence of transportation is passed by such courts, the order for transportation is to be made by the common law judges. To the Secretary-at-War is given the general control of military prisons and prisoners. Provisions are made respecting enlistment, conveyance and quartering of soldiers, their billet on innkeepers and others, and for giving force to the "articles of war."

The Articles of War for the army are made by the Crown as the head of the army, or by the Commander-in-Chief, and regulate the discipline of the army. The Act on which the articles of war for the Navy are founded was passed in the reign of George II., which consolidates the laws relating to Royal ships, and sea-forces and marines.

The administration of military affairs is distributed among a number of executive offices. These are of two kinds, civil and military—the former, providing for the subordination of the army to the Executive, and superintending all the civil relations of the forces; the latter having the immediate military government of the army. The administration of military

* By the common law, desertion by a soldier could only be regarded as a breach of contract, and the striking a superior officer as an assault.

affairs is highly complicated, and the distribution of duties relating to the maintenance and control of the army, among numerous departments, is immethodic and confused. The complexity and want of system in this branch of the public service have been very generally complained of as productive of great delay, waste of labour, and imperfect responsibility, of which the consequences are extravagant expenditure of public money and diminution of the effectiveness of the army.

The *Secretary of State for War*.—Before the recent appointment of a fourth Secretary of State, the Colonial Secretary had the important office of supervising the whole military administration of this country, and the regulating of the amount and distribution of the army abroad. The orders of the administrative government, respecting the employment of troops, were communicated to the Commander-in-Chief by the Colonial Secretary. Orders were similarly conveyed to the Ordnance Department, which has the separate control of the artillery and engineers, respecting the employment of those forces, the supply of arms to the rest of the army and the erection of fortifications and barracks. The Colonial Secretary submitted to the Queen the consideration as to the number of forces to be employed in any service, and the number decided on was communicated by such orders. He communicated also with officers com-

manding forces in foreign countries, and conveyed to them the orders of the Government.

Commissions in the regiments serving in India and the colonies, were issued subject to the authority of the Colonial Secretary, who countersigned the lists of promotions and appointments on which the Royal pleasure had been previously taken by the Commander-in-Chief. For the supply of arms to the army the Commander-in-Chief applied to the Secretary-at-War, who applied to the Colonial Secretary, who applied to the Queen, and having obtained the Royal authority, issued an order to the Board of Ordnance to furnish the requisite supply. All military expenditure was sanctioned under the signature of the Colonial Secretary, and the army estimates, submitted to Parliament, were prepared under his directions by the Secretary-at-War. The Colonial Secretary recommended the bestowal of the order of the Bath, a distinction chiefly conferred for military services.*

* A Royal Commission, which in 1837 reported on the military administration, recommended the consolidation of several of the offices by which it is conducted, and the transfer to the Secretary-at-War of the supervision of the army. No such consolidation is at present decided upon, and though the office of Secretary-at-War will be retained, the newly appointed Secretary of State for War will have the duties with respect to the war which have been hitherto discharged by the Colonial Secretary. The other principal changes contemplated are the transfer of the Commissariat to the new department, the preparation in it of the army estimates, and possibly the transfer of the *civil* duties now exercised by the Ordnance Office.

The *War Office* is another department of Government to which is assigned *civil* control of the army. The head of this department is the *Secretary-at-War*, whose office, distinct from that of the Secretary of State for War, relates chiefly to *legal* and *fiscal* affairs. The *Secretary-at-War* is bound by the terms of his commission to give effect to the orders of the Commanders-in-chief issued with the approbation and consent of the Sovereign, excepting in as far as these shall appear contrary to the rules of the service, or to make any alteration in the expenditure of the army, in which case it is his duty to make reference to the Lords of the Treasury, and to act in strict conformity to their instructions.

The *Secretary-at-War* is the organ of legal and judicial control over the army. To him is given the general regulation of military prisons, the appointment of inspectors of them, and the removal of deserters. It is his duty also to transmit the articles of war to the common law judges.

The army accounts are all examined at the War Office. The routine with respect to them appears to be as follows:—The colonel of each regiment appoints an agent who acts on his behalf, to demand and receive from the paymaster-general the sum due for the payment of the regiment. This appointment is entered in the office for auditing public accounts. The accounts of the army agent are transmitted to the War Office with vouchers for

examination, and when they are settled, warrants are made out for the payment of the money for each regiment. These warrants, signed by the Secretary-at-War and countersigned by the Treasury, are directed to the paymaster-general, and authorize him to pay the sum mentioned to the army agent, who subsequently makes the actual payments to the army officers. The Secretary-at-War is, in this manner, responsible for proper administration of the army expenditure; and with the Commander-in-Chief, but subject to the approval of the Treasury, regulates the rates of pay and allowances to the army. Payment of the militia and yeomanry is also superintended by the Secretary-at-War, who controls also the army medical department, jointly with the Commander-in-Chief, and submits to Parliament the army estimates under the directions of the Colonial Secretary.

Commander-in-Chief.—The supreme military office controlling the whole of the British army, except the Artillery and Engineers, is the office of the Commander-in-Chief, who directs the execution of such measures or acts necessary to be performed in this country for the regulation, direction, and employment of the army, as are decided upon by the Queen. He has the superintendence of the organization, instruction, and discipline, of the troops belonging to different branches of the military service under his authority, and sees that the forces are properly supplied

with munition and arms, for which he applies to the civil authorities. The functions which the Commander-in-Chief exercises in correspondence with the Secretary of State for War, and the Secretary-at-War, have been already noticed. For instructions to the Commander-in-Chief respecting the *internal* defence of the country, the Secretary of State for the Home Department is the usual channel of communication. The movement and distribution of the whole army are directed by the Commander-in-Chief, but must be previously sanctioned by the signature of the Secretary-at-War to the order providing for the expenses of the route. Of the appointments in the army, which are not obtained by purchase, the Commander-in-Chief recommends the bestowal; but respecting appointments of officers to superior commands at home and abroad, he confers with the Secretaries of State. Respecting the number of military forces to be maintained in the Mutiny Act to be maintained each year, the advice of the Commander-in-Chief is annually submitted to the administrative government.

The *Adjutant-General's Office* has the supervision of the *personal* condition and equipment of the forces. The Adjutant-General is on the personal staff of the Queen, and is the channel of communication between the Commander-in-Chief and the commanders of corps. All orders and general regu-

lations issued by the Commander-in-Chief relative to the organization, discipline, and instruction of the army, are addressed to the commanders of corps by the Adjutant-General. To his department belong the care of all matters concerning the effectiveness of the troops, their formation, discipline, clothing, accoutrements, recruitment, and bounties, and the preparation of returns relative to these matters required by Parliament, or the Commander-in-Chief, or the Government. The Adjutant-General prepares for the information of Government, weekly returns of the troops stationed in Great Britain and Ireland, and a monthly statement of all the forces stationed at home or abroad. All military commanders of territories, or of bodies of troops in Great Britain, Ireland, and foreign stations, transmit periodically to the Adjutant-General circumstantial accounts of the state of the troops which they command, and these reports are regularly submitted to the Commander-in-Chief.

The *Quartermaster-General* has the duty of regulating the marches of the troops, providing the supply of provisions to them, and assigning their quarters.

The *Board of Ordnance* has the executive superintendence of the *materials* of warfare, provides the supply of artillery, arms, and ammunition to the army and navy, and has the custody of military stores. To this department belong the control of military magazines and dépôts, establishments for

the manufacture of gunpowder, the fortifications, erection and maintenance of barracks and military buildings in this country and the colonies, public foundries at which cannons are cast and bored for the use of the army, and manufactories of small arms. Part of the artillery and most of the small arms are, however, supplied by private contractors to the Ordnance Department. This office prepares monthly accounts of the military stores for the information of the Treasury, and the Ordnance estimates annually submitted to Parliament.

The trigonometrical survey of Great Britain, under the direction of the Board of Ordnance, was commenced in 1791, for military purposes, and is still continued. The operations which have been carried on for the purposes of this survey have been very extensive. From the materials collected in the field by this survey, have been drawn magnificent maps of the whole of Ireland, and a large part of this country, on scales sufficiently large to show with great distinctness the natural features of the country and its topographical details.

The head of the Ordnance Department is the Master-General of the Ordnance. He performs all the duties, *civil* and *military*, with respect to the corps of Artillery and Engineers, which the War Office and the Commander-in-Chief's office respectively perform for the rest of the army. The Master-General has

also exclusive control of the Royal Military Academy, in which must be educated all candidates for commissions in the Artillery or Engineers.

The *Commissariat Office*, hitherto a branch of the Treasury, provides food, fuel, forage, and means of transport for the troops, and supplies the army with provisions and other necessities in time of war. In making purchases and contracts, the commissariat officers are at present subject to the immediate supervision of the Treasury.*

The Admiralty.—The government of the navy is vested in the Lord High Admiral, or the Commissioners for executing his office. The office has, in modern times, been almost always in commission, that is, intrusted to a Board. This Board now consists of a first lord, who is a member of the "Cabinet," and five junior lords. By their orders all ships are built, sold or broken up, commissioned, employed, or paid off. The Admiralty has the important office of governing the public dockyards and victualling establishments for the navy. All naval appointments and promotions are conferred or approved by the authority of the Lords of the Admiralty, as are also all honours, pensions, and gratuities for naval services. They make all orders for payment of naval moneys, and prepare the navy estimates submitted to Parliament.

* See Note, p. 439.

The Admiralty is divided into five departments, each of which is under the control of one of the junior lords of the Admiralty :—

1. The distribution of the fleet is placed under the management of the first naval lord, together with the preparation of orders to ships in commission, and the selection and destination of lieutenants and inferior officers.

2. The department of the surveyor of the navy, under the superintendence of another naval lord, directs the building and repair of all the Royal ships, and the construction of their machinery and apparatus.

3. The manning and discipline of the fleet, the marines, coast-guard, dockyard battalions, and hydrographical department, are superintended by a third naval lord.

4. The storekeeper's department, the victualling, stores, transport, medical and hospital service, pensions, and pay of the navy, are assigned to the remaining naval lord.

5. The accountant-general's department, the packet service, dockyard-schools, chaplaincies, and civil service of the navy, are under the superintendence of the civil lord.

The Royal Observatory at Greenwich is under the government of the Admiralty, and by its authority the astronomical almanack is published. The Commis-

sion issued by writ of privy seal, constituting the Admiralty Board, assigns to the Commissioners the execution of the office of High Admiral of the United Kingdom, and foreign plantations, dominions, islands, and territories whatsoever, and places thereunto belonging, during the pleasure of the Crown, and the performance of all things concerning the navy, and the right and jurisdiction of the High Admiral.

CHAPTER XXXIV.

BOARDS INSTITUTED BY ACTS OF PARLIAMENT.

Woods and Forests and Public Works.—A considerable portion of the Royal revenue formerly consisted of the revenue of the Crown Lands and Forests. These Royal revenues, it has been mentioned, are now almost entirely given up by the Crown, and consolidated with the rest of the public revenue, out of which the civil list of the Crown is paid. The whole of the land revenues and possessions which belong to the Crown, excepting the Duchies of Lancaster and Cornwall, are under the management of the Commissioners of Woods and Forests, subject to the orders of the Lords of the Treasury. The Commissioners have under their general superintendence the works necessary for keeping up, altering, &c., the Royal palaces, houses, and parks. The First Commissioner of Woods and Forests is also First Commissioner of Her Majesty's Works and Public Buildings. The Board

of Public Works superintends the maintenance and erection of all public buildings, except those belonging to the Ordnance and Admiralty. The Board of Public Works has the charge of the metropolitan parks and lands, except some parts which are vested in the Board of Woods and Forests. The improvements made in the places of public recreation, and in new streets upon Crown land, are mainly due to the exertions of these Boards.

The Board of Control for East India Affairs has the superintendence of the territorial and political concerns of the East India Company, inspects despatches and communications between the Directors of the Company and their agents and servants in India, relating to territorial management and political relations. The Board of Control has power to alter, or amend, or keep back the despatches prepared by the Directors, and in urgent cases to transmit orders to the functionaries in India without their concurrence.

The executive government of the Company's territories is administered at each of the Presidencies in India by a Governor and Council. The governor of the Presidency of Bengal is also Governor-General of India, and has control over the other presidencies. The governors and their councils have each, in their district, certain powers of making and enforcing laws, subject always to the approval of the Court of Directors and Board of Control.

The home government of India by the East India Company consists of two bodies—the Court of Proprietors and the Court of Directors. The former elect directors and make by-laws binding for the management of the Company in matters not regulated by Act of Parliament.

The Court of Directors appoints the Governor-General and the Governors of the presidencies, subject to the approval of the Crown, and have an absolute power of recalling any of those functionaries. The Court of Directors possesses also a very large amount of patronage and lucrative appointments in India.

By the Act of 1853, entitled “An Act to provide for the Government of India,” it is provided that until Parliament otherwise provides, the territories now under the government of the East India Company shall continue under such government in trust for the Crown. After 1854 there are to be eighteen directors, of whom the Crown appoints, at first, three; afterwards, upon casual vacancies, three more, and the number of those not appointed by the Crown is to be reduced to twelve. The Directors appointed by the Crown, and six of those appointed by the Company, must have severally served for ten years in India. The ordinary term of office of the Directors is to be six years, and their necessary qualification is the possession of 1000*l.* East India Stock.

Certain legislative members are added to the

Councils of India for making laws. These members are to vote at meetings for making laws in India, but are not to participate in the executive functions of the Councils. No law is to have force without the assent of the Governor-general. An important alteration has been made with respect to the patronage of the Company. The rights of the Court of Directors to nominate students of the Civil College of the Company at Haileybury, and to nominate assistant-surgeons in the Company's forces, are to cease; and, subject to regulations of the Board of Control, any natural-born subject of the Queen, on application, shall be admitted to be a candidate for examination, which is to be passed before entering the college or obtaining the place of assistant-surgeon. The Board of Control is to make regulations for such examination, and to determine the age and qualification of students to be admitted at Haileybury, and the military seminary at Addiscombe.

The General Board of Health has certain powers for establishing sanitary regulations in any part of England and Wales except London and the metropolitan districts under the Commissioners of Sewers. On petition of one-tenth of the ratepayers of any town, or when the number of deaths in it annually exceed 23 in 1000 on the average of seven years, the Board of Health may send an inspector to make public inquiry as to the sewerage, drainage, water-

supply, and burial-grounds. Upon report of such inspectors may be founded an Order in Council for putting in force the Public Health Act, 1848, in such place, if it have no local Act; or if it have one, the Privy Council may make a provisional order to be afterwards sanctioned by Parliament.

In the places where the Public Health Act is put in force, local Boards of Health are constituted, who are elected by ratepayers and owners. These local boards have very extensive powers for the improvement of sewerage and water-supply and the abatement of nuisances.

The Poor Law Board superintends the execution of the laws relating to the relief of the poor in England and Wales. This Board is authorized to make general regulations for the management of workhouses, the conduct of guardians of the poor, relieving officers, and has the power of making contracts and examining the accounts of expenditure for the relief of the poor.

The Board consists of a President and Commissioners, of whom four are constituted *ex officio*, viz., the Lord President of the Council, the Lord Privy Seal, the Home Secretary of State, and the Chancellor of the Exchequer. The Commissioners have the power of directing any number of parishes to be united into *Unions* for the relief of the poor in them. The entire management of the poor in each Union

is assigned to local Boards of Guardians, partly elected by ratepayers and owners ; the local magistrates are *ex-officio* members of the Boards of Guardians.

Besides those above mentioned, there are other Boards instituted by Act of Parliament which collect the public revenue—the Boards of Customs, of Inland Revenue, and the Post Office. The description of them, however, does not fall within the scope of an inquiry respecting the constitutional government of Great Britain.

CHAPTER XXXV.

LOCAL ADMINISTRATIVE GOVERNMENT.

BESIDES the several departments of the State, upon which devolves the Administrative Government of the nation generally, there are numerous provincial and municipal institutions to which is assigned the local administration of civil affairs. These institutions are of great importance, constitutionally considered. In them the principle of self-government, which is the life of the British Commonwealth, obtains a development distinct from that observed in the Central Government, but constituting an essential accessory to it. The jealousy of English liberty is nowhere more strikingly illustrated than in the sedulous preservation, to the municipal bodies, of their rights of self government, which, within its proper sphere of action—the administration of affairs *exclusively* local—is wisely defended from infraction by the Central Government, even though it be nationally

constituted. Bureaucracy, or the government of provinces by offices which are merely dependent branches of the Central Government, is a natural, and indeed inevitable incident of unconstitutional government. On the other hand, local governments, dependent on the Central Government only in matters affecting their relations with the rest of the community, are the offspring of constitutional liberty—can exist only where there is constitutional liberty—are the institutions which, of all others, an arbitrary Government is most interested in destroying. Its power is little affected by a paper constitution, or the simulacrum of a representative assembly which is either used as an instrument, or regarded with an affected respect, or treated with pretended parental indulgence, the cloak of well-founded contempt. But an absolute government must be strictly central. Against local independence it directs all its power with instinctive wrath, as against a foe whose existence is incompatible with its own.

The subordination of governments, of which each is independent in affairs exclusively its own, is a principle of constitutional liberty restricted by no arbitrary limits. This principle extends to the highest and widest relations of mankind, as well as to the narrowest and most private. Applied to the whole family of nations, it establishes the truth—that each should be perfectly independent in its internal

government, but in its dealings with and relations to other nations, is justly subject to a public law, which all are interested in maintaining, and, if need be, enforcing. Applied to the component parts of a nation, the principle of subordination of governments, subjects each municipality to the common government in matters of common interest, and preserves each municipality completely independent respecting affairs affecting it alone. The like principle should define the liberty of every parish and hamlet, every society, and its individual members. The principle is obviously that which gives the greatest amount of liberty, consistent with the constitution of civil society. Perfect independence is unattainable except in solitude. When men are collected in societies, their mutual contact necessarily deprives them of part of their individual liberty; and it is not quite exact to say that constitutional freedom consists in giving to each man all the liberty which is compatible with the liberty of his neighbours—for then the liberty of each remains undefined. Complete freedom consists in the possession, by each individual and each community, of independence in all actions which they can and will respectively perform without interfering with their neighbours, and participation to the extent of their responsibility in their common government.

The attempt was made in England, after the Norman Conquest, to destroy the independent political

organization of the shires and boroughs, by the appointment of Royal provosts. Instead of the elective Saxon shire-reeves or sheriffs, Norman viscounts were set over the shires; instead of the borough-reeves, bailiffs were appointed to the municipal towns by the Norman king. It is not within the course of the present inquiry to trace historically the various changes which the Local Governments have undergone. Their present condition is what we have here to consider; and I purpose commencing with that of Boroughs, in which the principle of Representative Government is by far the most completely carried out.

The municipal institutions of England are now chiefly regulated by a most important and comprehensive statute of the year 1835, entitled an Act to provide for the Regulation of Municipal Corporations in England and Wales. This Act does not abridge the prerogative which the Crown has of creating corporations or conferring franchises, but regulates the privileges and power of nearly all the municipal corporations existing at the time the Act was passed, and enables the Crown to extend those powers and privileges to towns and boroughs subsequently incorporated, upon the petition of their inhabitant householders.

The province of the incorporated Municipal Governments comprises the superintendence of the

local police, the administration of justice in local courts subordinate to the supreme judicature, the management of the lighting and supply of water, and the administration of laws relating to the Health of Towns. The Municipal Government is intrusted to a *Town Council* popularly elected. The electors are burgesses or freemen, who henceforth are not to be admitted by gift or purchase. The burgesses qualified to vote at municipal elections are all the males of full age, who, until August 31, and for two full years preceding, have occupied any house, counting-house, warehouse, or shop within the borough, and resided within seven miles of it, and duly paid the poor-rates and borough-rates for premises so occupied ; except that aliens are not qualified, nor persons receiving parochial or municipal alms within twelve months before August 31. Large boroughs are divided into *wards*, of which the burgesses elect their councillors severally.

The members of a Town Council are the *Mayor, Aldermen, and Councillors*. Of them are required additional qualifications respecting the property they possess, or for which they are rated. One-third of the Councillors are elected annually by the burgesses, on the first day of November, when the third who have been longest in office retire, but are capable of being immediately re-elected. The Councillors elect the Mayor and Aldermen on the ninth day of November.

To the Town Council are intrusted all the deliberative and administrative functions of the Corporation. They appoint the Town-clerk, Treasurer, and other municipal officers; and may also appoint Committees, either general or special; but the acts of these Committees must be submitted for approval to the Town Council. It appoints a "*watch*" Committee, presided over by the Mayor, to regulate the police, and a sufficient number of constables. The Council may assume the power of inspectors of *lighting* the borough, where there is no local Act for lighting, and may make certain provisions for the suppression of *nuisances* by by-laws subject to the approval of a Secretary of State. The Council has also control of the borough funds, may apply the surplus to local improvements, may order borough rates, and lease buildings and building-ground, for borough lunatic asylums, gaols, and houses of correction. Public libraries, and museums of art and science, erected in municipal boroughs under the provisions of 13 and 14 Vic. c. 65, are under the control of the Town Council.

The *Mayor* presides at the meetings of the Council, and at the election of Councillors. He is elected annually, on the ninth of November, by the Council from among the Councillors and Aldermen, and continues in office one year. He is a Justice of the Peace during his continuance in office, and the year succeed-

ing; and where the borough has a Parliamentary franchise, he is the returning officer.

The *Aldermen*, of whom the number is one-third that of the Councillors, are elected from among them by the Council, and continue in office for six years; one-half the number of Aldermen retiring every three years, but being capable of being immediately re-elected. The functions of Aldermen scarcely differ from those of Councillors, except that in some cases they may act in the place of the Mayor, and superintend elections of Councillors.

The *Town Clerk* acts under the direction of the Town Council, preserves minutes of its transactions, and other records and municipal deeds, and makes out municipal electoral lists. The *Treasurer* keeps account of all receipts and disbursements, and pays no money belonging to the borough except by written order of the Council. The Auditors of accounts are elected annually by the burgesses. The *Assessors* act with the Mayor in revising the lists of burgesses.

The Municipal Corporation Act of 1835 gives a list of boroughs which are to have a Commission of the Peace, and another list of boroughs which are not to have a Commission of the Peace except upon petition to, and grant by, the Crown. The Queen may appoint Justices of the Peace for boroughs named in either of these lists. Also salaried Police Magistrates, being

barristers of five years' standing, may be appointed by the Crown at the instance of the Town Councils.

Upon petition of the Town Council, setting forth the grounds of their application, the Crown may appoint a *Recorder* of a borough, or of several conjointly, who is authorized to hold a separate Court of Quarter Sessions, which is a Court of Record, having cognizance of the same crimes, offences, and matters as Courts of Quarter Sessions of Counties.

The chief local authorities for the Administrative Government of *Counties* are Lords Lieutenant, (who are also generally Custodes Rotulorum,) Deputy Lieutenants, Sheriffs, Justices of the Peace, and Coroners. Of these the latter only are popularly elected.

The LORDS LIEUTENANT are permanent honorary officers, appointed by the Crown by patent under the Great Seal, and hold their offices during the Royal pleasure, but usually for life. The Lords Lieutenant are organs of communication between the Central Executive Government and the local Magistracy, in matters relating to the preservation of the peace, to which, and the local Militia and Yeomanry, their authority chiefly extends. The Lord Lieutenant nominates the officers of the local Militia corps and the Deputy Lieutenants, and as Custos Rotulorum, has charge of the records of the County,

and appoints the Clerk of the Peace. The principal duties of the Lords Lieutenant and Deputy Lieutenants are now regulated by the Militia Acts.

The SHERIFFS of Counties, formerly elected by the people, are now annually chosen by the Crown, from persons selected by the Judges of Assize. The duties of Sheriffs to make returns of Parliamentary elections have been noticed in a preceding chapter. The Sheriffs preside also at the election of Coroners, and are responsible for the execution of processes from the Courts of Justice, the service of writs, arrests, summons and returns of juries, the taking of bail, and the execution of judgments, civil and criminal. The chief duties of the Sheriffs are performed by their Under Sheriffs and Bailiffs, who enter into sureties for the due execution of their office, and hence are called "Bound Bailiffs," which name (says Blackstone, with mild professorial jocularity) "the common people have corrupted into a much more homely appellation." Fines, &c., and recognizances forfeited to the Crown are received and accounted for by the Sheriffs. On leaving office they transfer the custody of prisoners and execution of writs and processes not wholly executed to their successors.

MAGISTRATES.—The judicial power of the County Magistrates or Justices of the Peace in Sessions and Quarter Sessions has been already noticed. The

County rates are assessments in every parish of a County, assessed by Justices in General or Quarter Sessions, and applied chiefly to the payment of Coroners' fees, the repair and alteration of County bridges* and highways adjoining. Countygaols, houses of correction, shire halls, and lunatic asylums, expenses of the prosecution of felons and vagrants, and of bringing insolvent debtors before the Court of Insolvency. All business relating to the assessment and application of County rates is, by 4 and 5 Wm. IV., c. 48, to be made in open court; but this statute does not entitle the ratepayers to take part in the allowance of the accounts, nor to inspect the items. The Justices may appoint a Committee of themselves for preparing fair and equal County rates, who may require returns of the annual value of the property in any parish liable to be assessed, with the date of the last valuation. The Justices are empowered to appoint Treasurers of Counties and Divisions of Counties, who are to receive sums paid for County rates, and to publish annually accurately abstracted accounts of them, in the County newspapers. The Justices in Quarter Session may, by the Act 2 and 3 Vict. c. 93, by means of applica-

* By Acts 13 and 14 Geo. II. c. 29, and 43 Geo. III. c. 59, no money was to be so applied without presentment of the insufficiency of the bridges by Grand Juries at Assizes, Sessions of Counties, Cities, &c. By 52 Geo. III. c. 110, such presentment may be dispensed with in some cases.

tion to a Secretary of State, establish a *County or District Constabulary*, of which the expenses are to be defrayed out of the County rates.

By 7 and 8 Geo. IV., c. 31, extended by 2 and 3 Wm. IV., c. 72, the inhabitants of a Hundred, Wapentake, Ward or District in the nature of a Hundred, are liable to make full compensation to persons damnified by damage done by rioters in such district to buildings and other property. The amount of compensation is recoverable from the High Constable, and payable by the Treasurer of the County out of its rates, and is to be reimbursed by rates to the like amount raised in such district.

There is a like provision for compensation for damage done by riot in towns and places not within any Hundred; Peace-officers in towns acting instead of High Constables in Counties.

Counties are said to have been divided into Hundreds, and these again into Tithings, in the time of King Alfred. The Tithings were so named because each was intended to contain ten freeholders. Over each of the Hundreds, which, in the northern counties are called Wapentakes, is a High Constable or Bailiff, who is now, by 7 and 8 Vict., c. 33, chosen by the Justices at Special Sessions.

Coroners' duties were defined by an ancient statute, *De Officio Coronatoris*, 4 Edw. I., s. 2. When com-

manded by the King's Bailiffs, or honest men of the County, they are to go "to the places where any be slain or suddenly dead or wounded, or where houses are broken in, or where treasure is said to be found," and to inquire by a jury in the manner prescribed. The Act 7 and 8 Vict., c. 92, provides for the election of Coroners of Counties and districts by the freeholders. The Sheriff is to hold a Special County Court for the election of a Coroner, and if the election be not then determined "on the view," with the consent of the electors, is to proceed to take a poll. The Sheriff may erect polling-booths for taking the poll, and the voters are to poll in the districts in which their property lies. The Coroner acts in place of the Sheriff in various causes and matters in which a Sheriff is a party or otherwise disqualified to act, as in processes in which the Queen is interested. Besides County Coroners there are those of some boroughs and other places.*

Clerk of the Peace is the ministerial officer of the Courts of Quarter Sessions in every County, Division, Borough, or other place in which Quarter Sessions are held. He is appointed by the Custos Rotulorum (or, on his neglect to appoint, by the Justices), and holds office during good behaviour. He or his deputy constantly attends the Court of Quarter Sessions; gives

* See ante, Chap. XXVIII.

notice of its meetings; issues its various processes; records its proceedings; reads all Acts directed to be read in Sessions; calls jurors and persons under recognizance; arraigns prisoners; administers oaths; receives and records verdicts, &c. He is required to draw bills of indictment when the prosecutor does not employ another legal adviser.

Clerks of the Peace have custody of plans and sections of railways and documents directed to be deposited with those officers under the Standing Order of either House of Parliament (7 Wm. IV. and 1 Vict., c. 83) and have other duties, by statute, with respect to juries, Sheriffs, savings' banks, friendly societies, &c.

Vestries, or assemblies of parishioners for the transaction of parochial business, are among the numerous examples of the application of the principle of self-government by the laws of England. By the ancient common law all rated inhabitants of a parish had a right to meet in vestry for the affairs of the parish, and to vote the necessary rates. But this right became gradually infringed upon. By custom, the government of a parish became often vested in a few individuals, either by indifference of the parishioners or the delegation of their authority, where their number was so large that a general assembly of them was found inconvenient. In other cases special vestries were constituted by Acts of Parliament. The Acts

58 Geo. III., c. 69, and 59 Geo. III., c. 85, without affecting vestries holden by special Acts or customs, gave all ratepayers the right of voting at open vestries. By the Act 1 and 2 Wm. IV., c. 60, known as Sir John Hobhouse's Act, parishes are empowered to alter the constitution of their vestries, except that rural parishes of less than 800 rated householders are excluded from the operation of this Act. In other parishes, on the requisition of 50, or else one-fifth of the rated parishioners, the churchwardens are to take the votes of the parishioners for or against the adoption of the Act. After its adoption, the parishioners elect annually their vestrymen and auditors of accounts.

The ballot is the mode of voting adopted in such elections, if a poll be demanded. Each ratepayer delivers to the inspectors of votes a folded list of names of persons for whom he votes, and the lists are deposited unopened in balloting-glasses or boxes. The inspectors subsequently examine the votes so collected, and give public notice of the names of the persons elected. One-third of the vestrymen retire annually. The proceedings of the vestry and their accounts are entered in books, which are open to the inspection of the ratepayers. The vestry also publish annually a list of charities, bequests, and estates belonging to the parish. The auditors audit the accounts half-yearly.

The Act 13 and 14 Vict., c. 57. empowers churchwardens and overseers, with the sanction of the Poor Law Commissioners, and a majority of the vestry, to provide accommodation for the holding vestry meetings, and regulates the appointment of Vestry Clerks. Their chief duties are to give notice of meetings of the vestries and their committees; to summon and attend meetings of the churchwardens and overseers, and enter minutes of their proceedings; to keep account of all charity moneys distributed by them; to keep the vestry books, parish documents, and rate-books; to make out the church-rates; and where there is no collector of poor-rates or assistant overseer, to make out the poor-rates; to issue process for recovering arrears of rates, and to advise as to their recovery; to keep churchwardens' accounts; to assist overseers in making out their accounts and parochial assessments; to make out jury-lists and lists of parliamentary voters, and perform various duties connected therewith; to make all returns required of the churchwardens and overseers, to advise them in the duties of their office, and to perform other similar services required by the Poor Law Commissioners.

CHAPTER XXXVI.

INTERNATIONAL GOVERNMENT.

THE remaining branch of this inquiry, respecting the institutions and principles of the British Constitution, relates to External Government, which is either International or Colonial.

Following the divisions of the offices of Government proposed in the third Chapter, we may divide International Government into two parts—I. *Legislative*, which authorises laws respecting people not subject to the British sovereignty. II. The *Executive* power, which publicly provides for the execution of those laws.

The laws of a nation have been already defined to be “public prescribed rules of Government,” (Ch. III.) According to this definition, whatever public rule directs prospectively any part of the conduct of British Government, with respect to foreign nations and subjects, is a part of our International law. It will be convenient to consider here, firstly, the practice ; and secondly, the principles of

International Government, in its legislative and executive departments.

I. International laws, like domestic laws of England, are not all directly enacted by the Legislature, but are partly made by other powers, with the sanction of the Legislature. The authorities upon which international laws are established, are principally these three—1. *Parliament*. 2. *Royal Prerogative*. 3. *Jurisprudence*. The principal sources of domestic laws of England are similarly threefold, being either statutory, or prerogative, or consuetudinary and judicial.

(1.) The authority of Parliament, though indubitably supreme in England, is exercised far less generally in the enactment of International than of National laws. The Acts of Parliament which affect the former are comparatively few; and many of them merely extend the Royal functions. Thus, by Acts of Parliament, effect has been given to conventions for suppression of the Slave trade, and to treaties between the Queen and Foreign Powers, for the apprehension and mutual extradition of criminal fugitives. By statute,* the Queen by Order in Council may direct that books and works of art published, and dramatic and musical compositions performed in foreign countries, shall be protected by copyright in this country, provided that such foreign

* 7 Vict. c. 12.

countries grant reciprocal privileges to British subjects. By various statutes the Crown has been empowered to regulate the exportation and importation in foreign ships, by reciprocal treaties of navigation ; and there are other cases in which the powers of International Government, exercised by Royal prerogative, have been extended by Acts of Parliament.

International legislation by statute is not, however, exclusively confined to the effectuation of treaties. For example, piracy, or felony on the high seas, is punishable by statute absolutely ; so also are enlistment, aid, and engagement in or for foreign military or naval service and operations without Royal licence ; so also are the advertising foreign lotteries, and the sale of tickets in them. The rights of ambassadors and public ministers in England are protected by statute, and the civil status of aliens in the British dominions is similarly regulated. By Acts of Parliament, various provisions have been made respecting the custody of prisoners of war, and the fitting out of privateers by letters of marque. Import duties on foreign produce are regulated by statute. Many other cases exist of independent international legislation by Parliament, where it has adequate independent power ; as where the property or persons affected by such legislation are in the British dominions, or on the high seas, or otherwise subject to the power of this country.

(2.) Where the execution of international laws is not solely within the power of the British Government, such laws are never definitively enacted by Parliament; legislation of which the objects are attainable only by the co-operation of Foreign Governments, is expressed by treaties. *Treaties* are compacts concluded for two or more nations by the authority of their respective Sovereign Powers. We may here consider briefly, first, the manner in which such compacts are concluded, and then their general nature and operation.

By the law of nations, as Puffendorf* shows, it is essential to the validity of a treaty, that it be established by sovereign authority. This sovereign authority is in England, as has been before remarked, usually exercised by the Royal prerogative, but has been sometimes delegated to other powers. Thus treaties are concluded by the East India Company. The constitution of each sovereign State determines who has the power of ratifying treaties. In the United States the President makes them with the consent of the Senate. The American Constitution vests the power of declaring war in the two Houses of Congress, with the assent of the President; a treaty of peace made by him, and ratified by the Senate, repeals such declaration.

It has been a matter of controversy between

* Law of Nations, b. 8, c. 9.

writers on international law, how far the conclusion of a *triple* or other confederate alliance, precludes some of the contracting parties from entering into separate alliances, to which the rest are not privy.

Several Powers thus confederate, constitute for many international purposes one Power ; such a Power, for instance, may, in its corporate capacity, enter into treaty with other sovereign Powers. This was done by the triple alliance of Austria, Prussia, and Russia, in the late war. The federation of the independently sovereign but United States of America, constitutes them one for the purposes of contract with other States. Similarly the Diet of the Germanic Empire, made war, peace, and alliances, and received foreign ambassadors. The modern Germanic Confederation is constituted for the mutual defence of the Federative States against a common enemy, and their protection from mutual hostility or internal disaffection. This Confederation has established a tribunal of arbitration of differences between the executive power and Chambers constituted in any of the Federative States. The Zollverein again is a union of several States of Germany under one Custom-house law, by which all duties levied upon imports into, or exports out of, the limits of the Zollverein, are collected into a common fund, which is divided among the several States in prescribed proportions.

Among the ancient Greek States, several federal

unions existed, of which the Achæan is the best known. The Amphictyonic Council was formed by a confederacy of the principal Greek nations, which were severally represented in it by deputies. It probably exercised many of the functions of an international judicature, and by its decisions founded the international law of Greece.

The history of international policy presents no more instructive and interesting lessons than those which relate to the formation and operation of federative systems, by which each of several States, maintaining its own sovereignty in political affairs not regulated by the confederation, gives up the portion of its sovereignty required for the purposes of the confederation. If we allow that the progress of commerce and civilization tends to bring all modern, commercial, and civilized nations into a virtual confederation; and if we allow further the effectual control by such a confederation of its constituent members, in cases of international right, to be a powerful means of promoting the peace and happiness of the world—we must acknowledge the importance of elucidating the principles of international government, by reference to the experienced results of similar confederations.

Treaties are generally signed by authorised representatives of Sovereign power, but the *ratifications* of a treaty must be exchanged between the contracting parties before it comes into operation. The extent

to which the contracting Powers are bound by agreements entered into by their ministers, has been a matter of controversy, and cases have arisen in which States have declined to ratify treaties signed by their representatives. Treaties, signed and sealed in the names of the contracting Sovereigns by their respective representatives, usually contain articles limiting the time within which the ratifications are to be exchanged. In the Great Seal Office are prepared, pursuant to the warrant of the Privy Seal, British treaties, to which the Great Seal is appended. The responsibility of the Lord Chancellor, the usual custodian of the Great Seal, in setting it to treaties, has been noticed in a previous quotation (Ch. XII.) from Hallam's "*Constitutional History*."

The persons by whom treaties are most frequently negotiated on the part of the Crown of England, are Ambassadors, and the Secretary of State for Foreign Affairs—the latter signing treaties concluded here, the former those concluded abroad—in accordance with instructions previously discussed in the "*Cabinet*."

The executive functions of Ambassadors will be mentioned presently. Their functions, which relate to international legislation, consist in the conduct at Foreign Courts of negotiations for treaties, alliances, and leagues, in accordance with the instructions of their own governments, and the communication to

the latter of information respecting foreign affairs. For the purposes of conducting negotiations with Foreign Powers, and of acting as an organ of communication between them and his own government, an Ambassador is entitled not only to communicate personally with the Ministers of the Court to which he is accredited, but also with the Sovereign himself, by either public or private audience. The right of demanding a private audience, at which the ministers are not present, is the distinctive and important privilege of an Ambassador properly so called. A public audience may be claimed by a Minister Plenipotentiary, as well as by an Ambassador.

During the progress of any diplomatic negotiation, the documents relating to it are usually treated as secret. Among such documents are communications of the Home Government to Ambassadors for their own instruction only, or to be communicated to Foreign Powers, memoranda of interviews between ambassadors, and the Sovereigns or their ministers, despatches of ambassadors to the Home Government. When the necessity for secrecy is considered to have ceased to exist, such documents, or extracts from them, are frequently laid before Parliament, as also are treaties concluded. Those treaties which have had the most momentous effect on the political history of nations have been arranged by Congresses attended by Envoys delegated by different States, with authority

to adjust affairs mutually affecting them, or by Sovereign princes met for like purposes, or by Sovereigns and diplomatic representatives together. The most remarkable instance of such a Congress in modern times was that of Vienna in 1814 and 1815, attended by the Sovereigns of several States, and plenipotentiaries of others. Another case of the arrangement of treaties is where the contracting Powers have mutually accepted the *mediation* of others. There are many important instances of treaties thus concluded under the auspices of mediating Powers; who are not bound by the law of nations to guarantee the performance of such treaties, but, in fact, often do so. Somewhat related to this method of international negotiation is that of conference between representatives of several Powers respecting disputes of other Powers. Such conferences have adjusted terms to be voluntarily proposed to the contending parties for the accommodation of their differences, and have recorded in protocols their concurrent opinions respecting them. The word *protocol* means, strictly, the first draft of any instrument; and in diplomacy is frequently applied to a record of matters agreed upon between representatives of Sovereign Powers, but not expressed as a treaty. Such a Protocol may be afterwards converted into a treaty, or made the basis of one.

Among treaties and international agreements not

conducted by diplomatic agents are those relating to commerce and navigation, which in England are frequently negotiated by the Board of Trade, and postal treaties framed by the Postmaster-general, and relating to the conveyance of English letters abroad, and of Foreign letters to England. Treaties relating to the colonies are sometimes negotiated by their respective Governors.

International agreements made by representatives are usually negotiated in accordance with previous instructions, but not universally. Thus, in time of war, the commanders of forces have, by virtue of their office, general powers to make certain agreements with the enemy: as *cartels*, for the exchange of prisoners; *truces*, for the suspension of arms; and *capitulations*, for surrender of places. Where such agreements are made without authority, or exceeding it, they generally require ratification, but not otherwise. By modern usage, where an extensive exchange of prisoners of war has been agreed upon by cartels, commissioners are permitted to reside in the belligerent countries, for the purpose of seeing them carried into effect.

Having thus considered the manner in which treaties and international agreements are made, we may refer briefly to their general nature and operations. Among the principal subjects recognised by treaties and agreements between States are, besides

those already noticed, Alliances offensive and defensive, conclusion of peace, independence of States and their boundaries, sovereignty of dynasties and their hereditary succession, right to frequent bays, harbours, fisheries, and rivers, and other intranational waters, quarantine, pilotage, navigation, custom duties, and conveyance of troops, ammunition, or of letters by post through each other's territories.

By a treaty of defensive alliance, the parties to it contract to assist each other in case of attack on either; by an offensive alliance, the contracting Powers engage to carry on war together against other Powers under specified circumstances.

Some treaties are made merely for temporary purposes, and expire by effluxion of time. But treaties perpetual in their terms—as those of friendship, alliance, commerce, and navigation—may be abrogated by either of the following causes affecting the contracting states :—

1. *Loss of independence of either State ;*
2. *Change of the sovereignty of either State ;*
3. *Violation of the Treaties by either State. ;*
4. *War between the contracting States.*

Firstly, it is of the very essence of a treaty that it should subsist between independent Sovereign States. So soon as a government loses its sovereignty by becoming subordinate to another, or is dissolved by subjugation or rebellion, treaties concluded by such a

government must be void, for it has no longer sovereign power to fulfil them.

Secondly, the Constitution of a State may be so completely changed that contracts previously made with it lose their practicability or applicability. This will be the case with respect to what are designated "personal" treaties, made with reference to particular rulers, as distinguished from "real" treaties, which bind the contracting States independently of changes of sovereignty.

Thirdly, as a general rule, the violation of one article of a treaty abrogates the whole, if the injured party elect to consider it so abrogated. The treaty is not, however, absolutely void, but only voidable upon a single breach, and the effect of such breach may be cured either by express waiver of such effect by the injured party, or by waiver implied by lapse of time, or by acceptance of compensation or otherwise. Treaties frequently, however, expressly stipulate that the violation of some articles of them shall not abrogate the rest.

Fourthly, War between the contracting Powers completely abrogates most treaties between them. The exceptions to this rule are stipulations made with reference to the war or during it. The latter are such as cartels and capitulations already mentioned. Among stipulations made by States, providing for future contingencies of war, are those which

provide that subjects of either State, residing in the other shall be allowed a certain time after declaration of war to retire with their property, that private debts of the enemy's subjects, and their shares in the public funds or other stock shall not be confiscated, &c. One of the articles of treaty of 1850, between Great Britain and the United States, for establishing a communication by canal between the Atlantic and Pacific Oceans, provided that the canal should be exempt from blockade in time of war. It is not always possible to distinguish positively between those stipulations of treaties which are abrogated by war, and those which subsist notwithstanding it; and in treaties of peace it is often expressly provided that treaties subsisting before the war shall be revived.

Unless the contrary be expressed, the basis of a Treaty of Peace is that which is designated by the words *uti possidetis*, and gives the territory conquered during the war to the conqueror, extinguishes the right of the former Sovereign to such territory, gives a final and complete title to captures without condemnation, and extinguishes all claim for damage done during the war, or consequent on it.

It has been found highly conducive to maintenance of international law by treaties, and to the settlement of controversies respecting the meaning of them, to subject them to technical rules of system-

atic interpretation. Such rules are expounded in the works of Grotius, Vattel, and Rutherford.

(3.) The last branch of international law which we have to consider, is that which is established by authorities confirmed by precedent. The principles which should regulate the conduct of States towards each other have been discussed by eminent publicists, who from abstract rules of morality and justice have deduced laws of nations. This branch of international law is frequently styled the Law of Nature, because the authority assumed for its foundation is not that of national legislatures, but the universal principles of natural justice. By general consent among modern civilized nations, the works of Grotius, Puffendorf, Vattel, and some other publicists, are regarded as authorities in international questions, are frequently referred to in diplomatic discussions, and receive the judicial sanction of tribunals which in different countries adjudicate in private causes affecting foreign States or their subjects. The precedents established by the decisions of those tribunals also constitute a considerable part of international law.

II. The EXECUTIVE power of international as of domestic government consists of two parts, the *Judicial* and *Administrative* branches. International judicatures have among modern nations very incomplete jurisdictions. There is no Amphictyonic

Council empowered to adjudicate upon disputes between the States of the civilized world, and able to enforce its decrees by armed force. The judicatures of different countries exercise jurisdiction with respect to persons and property, either within their territories or elsewhere under the control of their respective governments. The ordinary English tribunals deal with private questions between the subjects of this and other countries; but the judicature which properly constitutes a branch of international government, determine questions of international law relating to public acts of State. Such judicature is principally exercised in this country by the Admiralty Court.* This court, besides its ordinary jurisdiction in cases of maritime law, has, as a branch of international executive government, a jurisdiction in questions relating to rights of private property and contracts affected by war, the confiscation of military booty, naval prizes, and ships and cargoes condemned for contraband trading with, or illicit aid to, an enemy, the laws of blockade, the right of search of foreign ships for the purposes of ascertaining whether they have on board contraband cargoes, deserters, slaves, &c.

The Court of Admiralty has two branches—the Instance Court and the Prize Court. By the Act 3 and 4 Vict. c. 65, which is an Act “to improve the practice and extend the jurisdiction of the High

* See ante, Chap. XXVIII.

Court of Admiralty in England :” the Dean of Arches is empowered to sit in that court. With respect to property captured in war by *land* forces, or *booty* of war, it is provided that the High Court of Admiralty shall have jurisdiction to decide all matters and questions relating thereto, which are referred to it by the Privy Council. Evidence may be taken, *vivá voce*, in open court, or before commissioners. The court can direct issues of fact to be tried by jury before a Judge of the Superior Courts of Common law. The Prize Court of the Admiralty adjudicates respecting property captured by naval force at sea, in port, or on land, and all matters civil and criminal relating to prize. “The end of a Prize Court,” says Lord Mansfield,* “is to suspend the property till condemnation; to punish every sort of misbehaviour in the captors; to restore instantly if upon the most summary examination there does not appear sufficient grounds; to condemn finally if the goods really are prize, against everybody, giving everybody a fair opportunity of being heard.” The condemnation of vessels taken under treaties for the suppression of the Slave Trade, is generally adjudicated by a mixed Commission of English and Foreign Commissioners.

Vice-Admiralty Courts exist in several of the colonies, and have jurisdiction very similar to that of the Admiralty Court in England. The Act to con-

* *Lindo v. Rodney*: Douglas's Reports.

solidate the laws relating to the abolition of the Slave Trade * gives to the Vice-Admiralty Courts jurisdiction in all cases of forfeitures and penalties imposed by that Act. All appeals from the British Admiralty and Vice-Admiralty Courts abroad, are now made to the Queen in Council, and referred to the Judicial Committee of the Privy Council.†

All great States engaged in maritime war establish Admiralty Courts for the determination of prize causes. Blackstone says‡ that, by virtue of divers treaties with foreign nations, “particular Courts are established in all the maritime countries of Europe, for the decision of the question, whether lawful prize or not; for, this being a question between subjects of different States, it belongs entirely to the law of nations, and not to the municipal laws of either country to determine it.”

Administrative international Government is that branch of the Executive which affects foreign States non-judicially. In peace these functions are discharged principally by officers resident in foreign countries, and appointed by the Government to protect and promote the interests of its own subjects in them.

Ambassadors are the highest order of diplomatic agents accredited by one sovereign power to another.

* 5 Geo. IV. c. 113.

† 3 and 4 Will. IV. c. 41.

‡ Commentaries, b. iii. c. 5.

The functions of an Ambassador in negotiating treaties have a legislative character which has been already noticed ; but he also discharges several Executive functions, as the information of his own Government of acts of the State to which he is accredited ; and the application to the latter for redress in cases of the violation of treaties and other international laws. An Ambassador has also several executive functions which affect private persons, as the issue of passports to his countrymen abroad, assistance in the assertion of their rights in foreign Courts of Justice, authentication of documents for judicial purposes, &c.

An Ambassador is accredited to a foreign State, or authorized to exercise his office there by Letters of Credence or Credentials, delivered to him by his own Government, and addressed to that of the State in which he is to reside. Refusal to receive an Ambassador so accredited would ordinarily be considered a serious ground of offence by the Power represented, and to avoid such refusal, it is the modern practice of each Government, before sending an Ambassador to another Government, to inform the latter of the person intended to be sent.

The mutual reception of Ambassadors by two Powers intimates these two things,—*first*, that they recognize each other's sovereignty ; *secondly*, that they are at peace with each other. Where the ordinary course of Government has been changed

in a country by a revolution, or there are several competitors for the sovereign power, the new or competing Power would be recognized as Sovereign by another Government which entered into diplomatic relations with it by Ambassadors. But wherever a new Government has been established, it has been usual in modern times to send Consuls in the first instance, and after the Government has been established some time, *de facto*, to send Ambassadors. On the cessation of peace between two Powers, the Ambassadors of each quit the other's territory, and the communication with a hostile power by an Ambassador cannot be effected unless he be provided by that power with a safe conduct or passport.

The protection of the persons of Ambassadors and Envoys has been among all civilized nations, ancient and modern, a sacred principle of international law, binding in a great degree even in times of war. An insult to an Ambassador, or the firing on a flag of truce, would be considered as disgraceful a violation of international laws now, as formerly an injury to a herald was of the laws of chivalry. Not only the person of an Ambassador, but his property also, is protected from the effects of legal processes. No claim can be enforced by civil suit in the country to which he is Ambassador against him or his suite. The protection which the Laws of Nations extend to Ambassadors is confirmed by the English laws. The statute

7 Anne, c. 12, renders absolutely void all writs and processes sued or prosecuted against any Ambassador or other public minister of any foreign Prince or State, authorized and received as such by Her Majesty, or against the domestic or domestic servant of such minister, &c., whose name is registered in the office of one of the Secretaries of State. This Act does not extend to Consuls, who are consequently liable to arrest. Foreign Ambassadors, public ministers, and their servants are excepted from the Alien Registration Act, 6 & 7 Wm. IV. c. 11, and the Alien Removal Act, 11 & 12 Vict. c. 20.

Ambassadors are of two kinds, those who reside regularly at the Courts to which they are accredited—and those sent on special missions of diplomacy or ceremony. The expense attending the fulfilment of the office of Ambassador, and the embarrassing ceremonies required by his dignity, have led to the employment of ministers of inferior rank but similar power. The Congress of Vienna of 1815 divided diplomatic agents into four classes. The classification of diplomatic agents of Great Britain is as follows:—

1. Ambassadors, legates, and nuncios.
2. Envoys and ministers accredited to great States.
3. Envoys and ministers accredited to smaller States.

4. *Chargés d’Affaires* accredited to ministers of Foreign Affairs.

The diplomatic agents of the first, second, and third classes are plenipotentiary, that is, armed with "full power" in the diplomatic sense to represent their Sovereigns. The principal difference between Ambassadors and Envoys is, that the former represent the interests and persons, the latter represent the interests but not the persons of their Sovereigns, and therefore cannot claim private audience of the Sovereigns to whom they are accredited. England has now only two Ambassadors—those at Paris and Constantinople: at other capitals she is represented by ministers of inferior rank.

Chargés d'Affaires receive from the ministers of State of their own country credentials addressed to the ministers of the country to which they are sent. To some States the only diplomatic agents sent are *chargés d'affaires*, who, in such cases frequently have also the office of consul-general, and discharge consular functions; in other cases the secretary to an Ambassador or Envoy abroad receives authority to act as his deputy in his absence, and then takes the office of *chargé d'affaires*.

Consuls are not usually reckoned in the rank of diplomatic agents, except where, as has been just mentioned, the functions of consul-general and *chargé d'affaires* are combined. The duties of a consul relate chiefly to the protection of commerce. A consul submits to the authorities of the country to which

he is appointed, the instrument of his appointment, and thereupon receives from them a document called an *Exequatur*, which gives him authority to exercise his office, and secures to him the privileges attached to it. The instructions furnished to a consul on his appointment require him to become conversant with the laws and principles of foreign trade with Great Britain, and to promote the trade of this country by all fair and proper means ; to caution British subjects against illicit trade, and to inform his Government thereof ; to advise British traders, and promote goodwill between them and the subjects of the country in which he resides ; to uphold the rights secured to British subjects by treaty ; to endeavour to obtain redress for injuries to them, by application either to the local authorities, or the diplomatic agents of his own country ; to send to the Secretary of State for Foreign Affairs here returns of trade and commercial prices within his consulate ; to relieve distressed British subjects, and assist commanders in obtaining supplies for their ships.

The Act 7 & 8 Vict. c. 112, to consolidate the laws relating to merchant seamen, requires that seamen shall not be left by their commanders at foreign places, nor shipped from them without sanction of consuls, who are empowered to survey the provisions and accommodation of ships, and on receiving complaint of maritime offences, to send the offenders for trial in

England. By the *Mercantile Marine Act*, 1850, consular officers abroad may summon naval courts for hearing complaints of offences at sea, may discharge seamen from their ship ; and if such court be unanimous thereon, may supersede the master, and are to report such proceedings to the Board of Trade. The powers of these naval courts are extended by the *Mercantile Marine Amendment Act*, 1851, to the investigation of questions of wages and causes of wreck. By the *Merchant Seamen's Fund Act* of 1851, consuls are to remit to the Board of Trade the effects of seamen dying abroad on shore. By several statutes consuls are authorized to take evidence to be used in English courts of law. By the *Chancery and Common Law Procedure Acts* of 1852, affidavits may be sworn before consuls abroad.

The powers and immunities of consuls in foreign countries are usually secured by treaties with them. The provisions of such treaties vary considerably ; and in some cases consuls are invested by them with judicial functions affecting the subjects of the countries to which they are accredited.

International laws like domestic laws are authorized by the enactment or acquiescence of supreme legislatures ; domestic laws differ from international in that the latter are rules by which independent Powers are

mutually affected. It has been objected that these rules, being established by mutual compact only, there is no superior power to secure its observance by both parties to it, and that consequently, international rules are wanting in one of the essential qualities of law—complete authority. This distinction requires to be considered, for, if sound, it constitutes a fatal objection to the validity of all international law.

That the suggested distinction between domestic and international laws is one of degree and not of nature will follow, if it be considered that, on the one hand, domestic laws often have not, and, on the other hand, international laws often have, complete authority. The authority of domestic laws is theoretically universal, with respect to all to whom they relate. But practically their authority is often incomplete. The prosecution of violations of them is frequently omitted by neglect or connivance; frequently their operation is evaded by subtlety; sometimes they are impracticable, and contemplate objects of which the attainment is impossible. Again, with respect to international compacts, it is by no means universally true that the stronger of two parties to them has alone the power of enforcing them on the other Power. For international compacts are rarely such that only two nations are interested in their observance; most frequently, a large number of nations are interested in enforcing, and will often, as

we know historically, combine to enforce those laws. Those international compacts also, which affect only two nations, are often made publicly for the common convenience and benefit of their people, and then are generally enforceable on both parties by a power practically as effectual as physical force—the fear of losing the common benefit, and of losing the credit of other nations. That secret treaties made between two governments by family influence, are often violated without remedy, I feel no anxiety to disprove.

The objection to the validity of international laws just referred to, seems then to depend on an arbitrary definition of the word Law. For the establishment of fundamental principles of international Government, it is of comparatively little importance whether the codes which define the relations between independent States have certain technical characteristics of laws. What we are principally concerned to show is, that civilized communities are necessarily bound to each other by obligations morally and politically valid. Such a conclusion is unavoidable, if we admit the rights of international Government to be based on an extension of the principles upon which national Government is founded. This appears to be the correct view of the moral obligation of laws regulating the relations between sovereign States. Neither men nor nations can be absolutely independent unless absolutely isolated from the rest of mankind: the

moment that any kind of intercourse between individuals or communities takes place, it gives rise to mutual obligations, which laws do no more than define. The proper establishment and effectual working of these laws require, in the one case national, in the other international Government, and the division of both kinds of government into two branches—(1) the Legislative and (2) the Executive—is necessarily the same. The principles of these two branches of international Government will be here separately considered.

(1). The supreme power in international *Legislation* by compact with foreign States is, by the English Constitution, as was said, a Royal prerogative. The Constitutions of some other countries have given to legislative assemblies authority to control the conclusion of treaties. Thus the Athenians established alliances after hearing the representatives of the Powers seeking them in their open assemblies; and in America, as has been mentioned, treaties are concluded by the President, subject to the approval of the Senate. The important question here arises as to the comparative merits of the two methods of establishing relations with foreign countries.

In his celebrated Treatise on Executive Power,* M. Necker examines the Code for the Constitution of

* Du Pouvoir Exécutif dans les grands Etats.

France, which was completed by the Constituent Assembly, in 1791, and objects to the article which invested the King with the power of negotiating and signing treaties of Peace, Alliance, and Commerce, but required that they should not be valid until ratified by the Legislative Body. The following is a summary of M. Necker's objections to this condition:—

“A contracting party seldom makes known its last concession, till it is sure that that concession will bring the business to a conclusion; apprehensive that it might give an advantage, by discovering the extent of the sacrifice which interest or its peculiar situation would oblige it to make. This reserve would increase if the constitutional weakness of the negotiating power afforded no moral certainty of the approbation of the political body in which the ratification of treaties was vested. . . . The legislature will not fail to demand to be informed of the progress of the negotiation. . . . The other party in the negotiation will perfectly understand our desires, while she will be able to cover her own with the veil of secrecy. This situation is much like that of a merchant who should possess the magical power of knowing to a penny how much the buyers would give, and how little the sellers would take, without being in any degree obliged to discover his own intentions on the subject. A person provided with such a talisman would not fail to make an enormous fortune.

“It frequently also happens that there is only a single moment for the successful termination of a political treaty; for the consent of the contracting power may depend on a variety of transient circumstances; circumstances of such a nature, that the mere idea of such a treaty being on foot, becoming public, may strangle it in its birth Nor is it to be feared that, in a free constitution, the responsibility of the ministers should not prove an adequate safeguard against their treachery, or their acting in contempt of public opinion. . . . Ideas of wisdom and mode-

ration escape the wavering multitude who regard with supineness the systematic conduct of statesmen, and whose attention is only to be fixed, and their suffrages obtained, by highly-coloured novelties and striking exaggerations."

The objections of M. Necker to the interference of senates in the conduct of treaties obviously have reference to the international policy which prevailed in Europe in the age in which he wrote. In that age a large part of the time of kings and ministers was occupied in overreaching each other by diplomatic address, and the idea of basing treaties on those strict principles of universal justice which must ultimately prevail against the subtlest devices of Ambassadors, scarcely appears to come within the range of human thought. The only negotiation of treaties which M. Necker here considers is a species of political chaffering between kings. Now, even if treaties were always matters of bargain, it does not appear from the analogies of commerce that the best way of concluding such bargains would be to offer preposterous terms at first, and then to gradually abate them. Such a system of commerce prevailed in M. Necker's country in his time, and is continued in the bazaars of the East to the present day. But the method of trade in France now proceeds on the basis of a fixed price ; for a sounder knowledge of the principles of commerce has shown, that concealment of the terms which the trader is willing to accept is not a "talisman" of success. Among the improved modern

laws of exchange none is more certain than the chief security of the merchant is in a precise public knowledge of the prices of merchandize.

But treaties are not all matters of bargain. Some of them at least may be concluded according to ascertainable principles of justice. With respect to such treaties, M. Necker's economical objections have even less weight than with respect to treaties of the nature of bargains; for where the strict rights of the parties to compacts are by their nature ascertainable, it is obvious that the likeliest way to secure those rights by compact, is to openly and at once demonstrate their existence.

So far from negotiations being prolonged by the system of submitting treaties to the consideration of the Legislature, it appears to me that negotiations would be greatly shortened by such a system. The ceremony and finesse, which occupy so much time in diplomatic intercourse, are not used in parliamentary discussion; the impatience of a legislative assembly of tedious discussion would be a powerful corrective of the inane courtesy, the illogical assumptions, and the pompous verbosity which now very generally characterise international negotiation. Moreover the proposals would be fewer, more distinct, more "businesslike" when addressed, not to a court, but a practical assembly.

The promptness of negotiation which M. Necker rightly insists on as a powerful element of success

would be secured by leaving the conduct of negotiations to the Executive, and reserving the final ratification of treaties to the Legislature, or a branch of it. There are few nations which have so uniformly succeeded in concluding advantageous treaties as the Americans, who adopt this principle of international government.

Again, it may be admitted that the responsibility of ministers is "an adequate safeguard against their treachery or their acting in contempt of public opinion." Ministers are not likely to go so far as to conclude a treaty, which will draw on them the direct censure of Parliament, but short of that they may and do frequently arrange treaties containing unsatisfactory provisions; respecting which the voice of Parliament is not expressed, because the time has gone by when it might have been expressed usefully. M. Necker's objection to submitting treaties to the consideration of a "wavering multitude" would equally apply to all parliamentary legislation.

But the paramount objection to the present method of international legislation is, that it binds the people to laws, of which they generally are kept ignorant till the laws are finally settled; that is, binds the people as parties to agreements, about the terms of which they are not consulted. There is an obvious inconsistency in the Legislature, thus delegating a large share of its most important functions to the Executive. The chief

arguments for a separation of the Legislative and Executive functions apply to domestic and to international government alike. If the people ought to be made responsible for the former by participation, ought they not to be for the latter? If the public interest should be continually kept alive, and the public voice expressed during the progress of legislation at home, the same corrective power should be applied to the arrangement of their relations with the rest of mankind. At present the public voice is generally silent respecting international laws ; for the public attention is rarely called to them by discussion, and the majority of the people are completely ignorant of their nature, until a war or other great catastrophe—the result of years of secret diplomacy—provokes general inquiry. In every other department of its government the nation insists on being made acquainted with the progress of legislation ; in foreign affairs, alone, submits to be led in the dark. This pernicious system of secrecy (which is continually asserted, but never proved to be necessary) shields the incompetence of diplomatists, renders England too often the victim of foreign fraud, and the unconscious agent of foreign tyranny, and—what is perhaps the worst result of all—habituates the people to regard international laws as compacts to which they are not parties, and respecting which they have, therefore, no moral obligations.

(2.) The principles on which international *Executive* government is established remain to be briefly noticed. The consideration that all government is founded on the rights of intercourse, will serve to remove many perplexities respecting the proper limits of the functions of international government. It would be obviously unjust and impracticable for a nation to interfere in all the disputes of other communities, or to constitute itself a universal dispenser of justice to the whole world. The obligation to maintain international rights must have necessary limits, and these are deprived in the same way as other social obligations—by their mutuality. If, to repeat an illustration already used, I see my neighbour attacked by a robber or assassin, I am bound to aid in repelling the attack to the extent of my ability, and this aid is required by a moral duty which is reciprocally incumbent on my neighbour, under circumstances of a similar attack upon myself. But I am not bound, in like manner, to endeavour to avert acts of violence which may be committed in distant places, for I could not obtain from every remote stranger similar protection, and therefore the mutuality of a moral obligation does not in this case exist. Now the government of a country, having a wider operation than the power of individuals, has a more extended duty than they have,—is indeed a combination of all the members of the community to

afford mutually that protection which individuals can give only to their neighbours. The international duty to maintain the laws of nations has a still more extended operation ; indeed, is, in many cases, little restricted by geographical limits.

It is, doubtless, a matter of difficulty to define with precision the cases in which international rights may be vindicated by nations. We may, however, broadly distinguish the rights which a nation may justly vindicate into two classes—firstly, those which affect itself ; and secondly, those which affect its neighbours : this relation of neighbours not being restricted by geographical proximity, but comprehending mutuality of obligation, however constituted.

The first of these classes of rights includes that of self-defence. If we admit that a man may justly defend his own person and personal rights, it follows that the individuals of a nation may combine to defend the rights appertaining to them in their united capacity. To deny this would be to deny the lawfulness of all civil government whatever, and to contend for a total disorganization of society ; for civil government is an association for mutual defence. It is manifest, also, that such defence may be required against external as well as internal enemies. Moreover, the hostility which a nation may be thus justified in resisting may be indirect as well as direct,—for there may be violations of the laws of

humanity, which have so extensive effect as to endanger consequentially the rights of a nation not mediately attacked.

Secondly, it is to be inferred, from an extension of the principle just mentioned, that nations may justly associate for mutual defence of those rights of each of them which each might justly defend separately; and the mutuality of obligation distinguishes this case from that of obtrusive interference with other nations. Thus, to select an instance in which the application of these principles is not likely to be controverted—the whole civilized world may combine to suppress Slave-trade, regarding the trader in human flesh and blood as a common enemy of the whole human race.

How little do those who condemn all war as unchristian, and yet most zealously advocate the confederacy of nations for the suppression of slave-trade, regard the principles of international right, by which alone such confederacy can be justified! By conventions between various States, naval forces and armaments are maintained to enforce mutually the laws of the several States for the suppression of slave-trade, and to prevent such trading by their subjects respectively. The squadrons so employed, by force of arms capture and destroy vessels carrying slaves. In other cases, England has assumed the right to seize the slave vessels of foreigners without the concurrence of

the States of which they are subjects.* Here the forcible maintenance of the rights of nations is carried to its utmost limit. In many cases the slavers captured are not dealing with slaves to be carried to the countries of the capturers: in such cases those countries receive no immediate injury from the traffic, which they thus endeavour to suppress; so that arms are employed not in direct self defence, nor even for the immediate protection of allies, but from general regard for the rights of humanity, and the interest of nations in maintaining them. For it cannot be denied that one principal justification of warfare against slave-trade is the benefit of the countries from which the slaves are exported—that is, of countries, with which we are connected by no ties of alliance, of countries so regardless of their own welfare, that they often voluntarily participate in the unholy traffic which perpetuates their barbarism.

If, however, we regard the rights of international government as simply an extension of the rights of

* Thus a convention having been made between this country and Brazil, in 1826, for seizure of slave-ships of subjects of the latter country, and its Government having subsequently given notice that the adjudication of such seizures should cease, the Act 8 and 9 Vict. c. 122, provided that such adjudication should continue, and be conducted by British Courts of Admiralty. A similar Act was passed affecting Portuguese Slave-trade, but was repealed when the Government of Portugal made a fresh convention with England for the suppression of Slave-trade.

domestic government, all difficulty in allowing the justice of warfare against Slave-trade ceases. The limits of the functions of domestic government include the restraint of individuals from inflicting injury upon themselves. For example, in England lotteries and betting-houses are declared to be illegal—not, indeed, merely on account of the private injury of individuals, (for, as was before said,* public laws ought to affect men in their social relations only), but because gaming is injurious to public morality, and, therefore, contrary to public policy. On the same principle slave-trade is made illegal by international laws, because it violates the fundamental rights of nations, and is, therefore, contrary to international policy.

The only legitimate use of armies and navies is as international police. The only legitimate purpose of war is to enforce international justice, and “keep the peace” of nations. Those who would condemn all war as unchristian must, to prove their proposition, show either that national and international laws are not founded on the same moral obligations, or else that the latter can be effectually maintained without force. No one has ever seriously controverted the right of a nation to employ constables to enforce the execution of its laws. Who has seriously contended that those laws could be always effectually executed merely by a moral persuasion of offenders against

* Chap. I.

them? And can it be said that international laws differ from national laws by having a peculiar property of universal persuasive efficacy? It is nothing to the purpose to answer that arms have been employed to gratify the vilest of human passions—ambition, covetousness, lust, and revenge; nor to assert the mournful truth that wars have been the most gigantic of human crimes—wholesale rapine, cruelty, and murder. So, likewise, has the internal police of a nation been misused to uphold despotic power, to rob the poor man of his one little ewe lamb, to trample down the oppressed as dust beneath the feet of the oppressor, to slake the tyrant's thirst of blood.

Undeniably a power so tremendous as that of war ought not to be used except in cases of the clearest necessity and equity. No merely artificial grievances, such as wounded honour or thwarted political schemes, but only violations of the fundamental laws and natural rights of humanity—infractions of the mutual equity which binds nations together—wrongs which unredressed would dissolve the confederacy of the civilized world—justify resort to arms. In applying the principles of equity to test the justice of war for the redress of an alleged wrong, the violation must be first shown of some precisely-defined right, strictly appertaining to the very Power taking up arms. But this alone is not sufficient. The first principle of equity is mutuality: there can be no moral right

without corresponding moral obligations ; and justice requires that the Power which seeks the redress of war should not merely define the right violated, but also show that, neither by non-fulfilment of corresponding obligations, nor by implied acquiescence in the wrong, the title to the remedy has been lost.

Is it injurious to the cause of peace to contemplate thus the application of the strictest principles of equity to the conduct of warfare ? On the contrary, the cause of peace, like every other righteous cause, is best promoted by revelation of the whole truth respecting it. No pious frauds really exist. So tremendous are the issues of war that it may at first sight seem to be for the benefit of mankind to argue, against knowledge, that all war is unjustifiable ; but if such arguments virtually demand impunity for all violations of the laws of nations, impugn their supremacy, disavow allegiance to them, oppose all international government, and inculcate high treason against the universal Sovereignty of Civilization—it seems to me that the real tendency of such arguments is to involve nations in that incessant warfare which is necessarily incident to a state of lawlessness.

The only proper use of arms which has been here recognized is the maintenance of the law of nations ; but it is so frequently and authoritatively asserted

that the legitimate purpose of armed force is the maintenance of the "*balance of power*," that it seems necessary to the completion of the inquiry to examine the accuracy of this assertion.

The expression "*balance of power*," is, of course, metaphorical; and, on examination, appears to be one to which it is difficult to attach a precise meaning. The nearest approach to an exact definition of it which I have been able to discover is the following: "When a number of separate and sovereign States have grown up beside each other, the entire system which they constitute may be conceived to be evenly balanced, so long as no single State is in a condition to interfere with the independence of the rest. But as in such a system of States there are generally a few which may be considered leading Powers, it is by these being made to counterpoise each other that the balance is principally maintained."*

This passage does not define with absolute precision the nature of a "*balance of power*," for the manner in which the supposed counterpoise is to produce the required result, namely, the restraint of each single State from interfering with the independence of the rest, is not explained. How are the "*leading Powers*" to be made "*to counterpoise each other*?" By the balance of one against all the rest, or by two equi-

* *Cyclopædia of Political Knowledge.*

ponderant combinations? If the word "balance" mean anything here it means some kind of *equality* of force; and there appear to be three ways, and three only, in which an equality of national forces can be effected by the confederation of States. *Firstly*, there may be a confederation of several States, of which the united power is balanced against a single State not belonging to the confederation. *Secondly*, two counterpoised confederations may be supposed to exist for the purpose of checking each other continually, and under all circumstances. *Thirdly*, the balance of power may be supposed to be constituted *prospectively*, so that when any case of interference with the independence of States arises, there will be *ipso facto* constituted two equally powerful forces, one in favour of, and the other opposed to, the interference. This threefold supposition appears to be exhaustive of all the cases in which the supposed balance of power can exist. At all events it remains for those who maintain the doctrine of that balance to show in what else it consists.

Now the first case—that of one nation being equal in power to the rest combined—may be at once rejected from our consideration, both because we know that such a case cannot occur in modern times at least, and because such system of international relations would, even if practicable, be incomplete.

For instance, in this country certain military forces are annually authorized by the Mutiny Act for the maintenance (as it is said) of the balance of power ; but it clearly would be utterly ruinous to this country to provide—and it certainly does not provide—singly an armed force equal in strength to all the armed forces which might possibly be confederated against it. Besides, the peace of the world would be greatly endangered if any one nation had nearly so great a power.

Secondly, it cannot be said that any system of balance of power exists, or could exist, dividing civilized nations into two known confederacies of equal aggregate power. Does England, or any other great State, maintain forces as its proper quota of the forces of one of two such confederations ? Moreover, even if such a balance of forces were constituted, there would be no security for its stability. The equilibrium would be merely instantaneous, and in time of war would be almost certainly destroyed by new combinations.

Even if it were practicable to secure the stability of such a balance as this or the first case supposes, it would but very partially affect the proposed purpose of restraining international aggression ; for though such a system might protect one confederation against the other, the case of members of either confederation attacking each other would be entirely unprovided for ;

so that such a system could have no claim to the character of a general defence of international rights.

The third case supposed, is that of a balance of power constituted *prospectively*, so that whenever the independence of any State shall happen to be interfered with, the powers composing the balanced system shall be *ipso facto* distributed into two equally powerful aggregate forces, one in favour of, and the other opposed to, the interference. It appears to me that such a balance could not be generally constituted, and even if it could, ought not to be.

To demonstrate the possibility of maintaining such a balance of power, it appears necessary to assume the existence of some self-operative law, by which nations shall be always so combined in every international contest, as to be in equipoise. But how can it be ascertained prospectively what nations will take part in future conflicts arising from possible cases of aggression? Surely that is not a probable hypothesis which assumes a faculty of predicting the relative strength of the powers engaged in such a conflict. Still less probable a hypothesis is it which supposes the existence of a self-operative law which will array the conflicting nations in equal strength against each other.

It has been said, indeed, that great States, from mutual jealousy, will be indisposed to allow rivals from adding to their power by the conquest or absorption

of the minor members of the balanced system ; and that thus each State will have “an interest and motive to exert itself in the preservation of the balance.” * Its stability is not, however, demonstrated by this argument, which refers only to some cases of accession of power, and neglects the consideration of other contingencies which would likewise suffice to destroy the balance, if it ever existed. The case is omitted from the argument of the absorption of minor States by mutual *partition* among greater States, of which the fate of Poland is an example. The case is likewise omitted of the federal union of several States, such as that by which the power of the United States of America has been vastly increased within a recent period. The case is likewise omitted of accession of power to a State from sources external to the balanced system—such as the annexation of Algeria to France, or the vast increase of the British Colonies.

To show that this balance of power is likely to be stable, it is obviously necessary to show that nations in seeking new alliances, will always endeavour to throw themselves “into the lighter scale,” as the balance turns from time to time, according to the incessant variations of the power of nations. Thus Hume, in his *Essay on the Balance of Power*, in which he does not attempt to prove its efficacy,

* Cyclopædia of Political Knowledge.

otherwise than by reference to supposed examples of it, says that, "In all the politics of Greece, the anxiety with regard to the balance of power is apparent, and is expressly pointed out to us by the ancient historians. Thucydides (lib. i.) represents the league which was formed against Athens, and which produced the Peloponnesian war, as entirely owing to this principle ; and after the decline of Athens, when the Thebans and Lacedæmonians disputed for sovereignty, we find the Athenians (as well as many other republics) always threw themselves into the lighter scale, and endeavoured to preserve the balance."

These historical illustrations are not very accurate. Thucydides (lib. i. ch. 23) says that the true cause of the Peloponnesian war was the alarm which the growth of Athenian power occasioned to the Lacedæmonians ; but surely the mutual jealousy of rival States is not the same motive as an anxiety for the balance of power ; for that jealousy would rather instigate a State to destroy the balance, and acquire a predominating power for itself. Again, with respect to the first pretext for the Peloponnesian war,—the alliance of the Athenians with Corcyra against Corinth—Thucydides by no means suggests that anxiety for the balance of power was a motive for that alliance, but, on the contrary, expressly states (ch. 44) that it was dictated by the policy of the Athenians, respecting the powers of Corcyra and Corinth "to break them

against each other, in order, by weakening the latter, to be better able to wage war against it and other naval powers." The correct view of Athenian alliances seems to be that they were always dictated by motives of self-aggrandisement ; and until instances can be produced of States preferring weak to powerful alliances by free choice, uninfluenced by rivalry or resentment, historical evidence will be wanting of that abstract love of the balance of power for which Hume contends. In the absence of such evidence we may safely assume, from the knowledge of human nature, that the most universal appetite of mankind, acting either individually or collectively, is for supremacy of power, not for a balance of it.

This inquiry respecting the Balance of Power will not appear to be a mere barren speculation, if it be considered what violations of international right have been defended by that doctrine, and what unjust principles of international government it would establish if legitimately followed out. The Balance of Power is not merely a misnomer ; it is a deceit. It has been the pretext for partition among powerful States of the territory of weaker States,—for the abstraction from such territory of parts erected into new monarchies,—for the interference of powerful States with the succession to the monarchies of other kingdoms,—for invasion to repress national struggles for constitutional rights,—for the cession of whole king-

doms to favoured Sovereigns,—for “the adjustment of the map of Europe.” Moreover, if the doctrine were legitimately carried out, it would require the nations of the balanced system to interfere to restrain others from increasing their power by new alliances, their wealth by new commerce, or their territories by new colonies.

If the balance of power were the thing it pretends to be—the scales of international justice—surely powerful States would besometimes weighed in that balance and found wanting. But it ever turns against the weak. Was it ever known to decide against the pretensions of powerful and victorious rulers? The partitions are always of subjugated territories; the cessions are in all cases of minor kingdoms; the rules of monarchical succession are imposed on weak States. Surely, if the balance were a just one, the rights of people, as well as the dynastic pretensions of rulers, would have some weight in it. But they who pretend to adjust that balance, hear only the claims of rulers, do not recognize the right of nations to choose their own governments,—do not even affect to consult the people who are transferred from one sovereignty to another as mere appurtenances of regal domains.

The stability of governments, and the preservation of national rights require not a balance of power, but the direct contrary—an enormous superiority of power exerted by the confederation of States against

every disturber of public peace. The independence of nations would be obviously endangered if one ambitious State possessed power nearly equal to the united powers of the rest of the world. It is the vastly superior power which the nations of the world possess by confederation which constitutes their protection against schemes of universal domination. In other words, the preponderance, not the balance of power is the end required by political combinations for the defence of international rights. If it be asked how that preponderance is to be secured, the answer is—That the people of a free state are zealous to uphold their domestic government because they are rendered responsible for it by their participation in it:—and free states will similarly combine to defend international laws when responsibility for them is similarly secured by national participation in their enactment.

CHAPTER XXXVII,

COLONIAL GOVERNMENT.

IN considering the extensive and difficult subject of the government of the British Colonies, it seems necessary to depart somewhat from the course adopted in the preceding pages, and to base the divisions of the subject upon historical considerations. The forms of colonial governments are so many, and their relations to the central government so various, that without some reference to history, the diversities and incongruities which exist in the several constitutional systems which we have here to consider, would be almost inexplicable.

In the first place, it is desirable to define the sense in which the word *Colony* is to be understood. It has been used in different senses at different times, but now generally designates territories possessing separate governments dependent on that of a Supreme State. All Dependencies might be denominated Colonies, but that word has conventionally a more restricted meaning, and, according to its usual modern acceptation, the Colonies of any sovereign state are

remote from it—are directly subject to the same sovereign power as it—have separate civil governments.

Contiguous dependencies of a supreme state are not regarded as Colonies; thus the smaller British Isles, of which the laws and municipal institutions differ from those of Great Britain, are not Colonies. Neither are remote territories so considered which are occupied chiefly for military purposes, and in which the civil power is consequently subordinate to military authority, as is the case in Gibraltar. Neither are territories considered to have to a State the relation of Colonies, unless they be directly subject to the same sovereign power as it. The sovereign power in British India is not directly the same as in this country; but is delegated to the East India Company, which exercises, for example, the sovereign power of making Treaties. The proprietary governments which were formerly granted by the British Crown to individuals were of the nature of subordinate principalities, in which those persons exercised sovereign powers. Again, Factories have been from time to time established for trading purposes in foreign countries, but have not immediately acquired exemption from their sovereignty and the jurisdiction of their laws. Again, the Ionian Islands, through a Lord High Commissioner, appointed by the British Crown, exercises in them the powers of a Viceroy, and may disallow Acts of their Legislature, are regarded for international

purposes as possessing the separate sovereignty of a Republic merely protected by Great Britain. In these and other cases, the control of a civil government by an external power does not suffice to constitute the colonial relation, the characteristic of unity of sovereignty being wanting.

The definition above suggested appears to distinguish accurately the British dominions which are conventionally deemed Colonies. That designation has, however, been very variously understood. Thus the word "colony" is the usual translation of the Greek appellation (*ἀποικία*) of the separately sovereign states formed by emigrants from several of the ancient Greek republics: new communities so formed being connected with those from which they proceeded by ties of alliance and deference in public solemnities, but in other respects politically independent. The formation of such colonies is a simple process of migration closely analogous to the swarming of bees from an overcrowded hive. The Romans, on the contrary, retained sovereign dominion over their colonies. Colonization, therefore, as it is now understood, more nearly corresponds to the Roman than the Greek system; but the Roman distinction of dependent dominions into Provinces and Colonies is not recognized in British government.

We may distinguish all territories added to the dominions of a supreme state either, *firstly*, by refer-

ence to the condition of the added territories previously to their acquisition ; or, *secondly*, by reference to the manner in which their government is subsequently instituted. With regard to the previous condition of acquired territories, the principal distinction is between those already subject to local government, and those which are either unoccupied by men, or are merely occasionally occupied by nomade tribes. Of countries already possessing civil government the sovereignty is changed either by *treaty* or *conquest*. The right of dominion of uninhabited lands is acquired by *occupancy*, in virtue of the natural law which gives to men the right of taking possession of whatever is hitherto unappropriated.

Again, the manner of institution of civil government in newly acquired dominions depends partly on the manner of their acquisition, and partly on the municipal laws of the people, who make the acquisition. Thus, if countries already occupied be annexed by Capitulation or Treaty, such compact will, in most cases, expressly or impliedly, determine in some degree the nature of the subsequent government. The government of new dominions will also partly depend on the laws to which the people who acquire such dominions are previously subject.* Generally allegiance

* See as to the different extent of the Royal prerogative in settled and in Crown colonies, *supra*, page 360, and *infra*, page 528.

is not destroyed by emigration. Even in the Greek colonies, already noticed, some kind of respect for the State from which the colonists proceeded was required of them ; and among modern nations Allegiance is a far more permanent obligation. According to the feudal principle and the law of England, a natural-born subject cannot of himself dissolve his allegiance by change of residence, or any other act. The old law writers regard, correctly, as I think, allegiance as a reciprocal tie (*reciprocum ligamen*), founded on mutual compact between the ruler and subject—the duty of the former being protection according to municipal and international laws,—of the latter obedience to them. Unless we thus regard allegiance as founded on social compact, we make it a merely artificial relation, very likely to be regarded as a historical or legal fiction, and thus destroy the moral basis of all colonial government.

Of the more ancient British Colonies and Dependencies the government was instituted by a method now discontinued—I mean that of general delegation of the sovereign power. Among the examples of such delegations were the Proprietary Governments already noticed, which, as Blackstone remarks,* were of the nature of feudatory principalities, with all the inferior regalities and subordinate powers of legislation, which formerly belonged to the owners of the

* 1 Commentaries, s. 4.

Counties Palatine in England. Again, many commercial Factories established in foreign states were communities governed by trading companies in virtue of compacts with those States and Charters granted by the British Government. Such was the origin of the dominions of the East India Company, and the anomaly of an association of British subjects now exercising sovereign powers is thus explained. Again, the Hudson's Bay Company, by a charter from Charles II. were for a long time absolute lords of the coasts of Hudson's Straits not possessed by subjects of any other prince or state ; but in the reign of George IV. the territories of the Company were by Act of Parliament subjected to the civil jurisdiction of Canada.

There are not now belonging to Great Britain any *proprietary* colonies of which the government is permanently granted to *individual* proprietors, nor any dependencies, except that of India, under civil government granted by *charter* to particular *corporations*. The systems of colonization just referred to almost entirely ceased before the end of the eighteenth century. During that century local legislatures, consisting of three Estates—that is, a Governor appointed by the sovereign, of a Council nominated by the sovereign, and an Assembly popularly elected were constituted in all the British Colonies then existing ; it was not until the commencement of the nineteenth century that the system thus introduced was departed from.

This most remarkable fact in the history of colonization is acutely pointed out in an admirable Report* of the Board of Trade on the institution of new forms of government in Australia. In all the older British Colonies as above defined ; that is, in all those immediate dependencies of Great Britain in which separate civil government was established, it was established with a popular Legislative Assembly. The dependencies in which such constitutions were not instituted by the end of the eighteenth century, were either those which at that time had been conquered but had not been actually ceded, as Ceylon, Trinidad, and Guiana, or merely military stations, as Gibraltar and Malta were ; or a fishing station, as Newfoundland was then occupied ; or a chartered colony, as was then the case with Sierra Leone.

But in the present century another method of colonial government arose. Within that period some of the most important of the British Colonies have been acquired ; in none of which, until recently, elective Legislative Assemblies existed. This fact serves to account for much of the dissatisfaction which has been expressed respecting modern colonial government. The following extract from the Report just mentioned concisely narrates the principal circumstances which distinguished the systems of colonial

* Report, April 4, 1849 ; approved of by the Queen in Council, May 1, 1849.

government which prevailed respectively during the last, and (until lately) during the present, century:—

“ During the nineteenth century, the British Crown has acquired by conquest and cession from Foreign States three transatlantic colonies;* one colony in Southern Africa,† and four colonies to the eastward of the Cape of Good Hope.‡ During the same period the British Crown has acquired, by the occupation of vacant territories, two colonies on the western coast of Africa, three in New Holland, one in Van Diemen's Land, one in New Zealand, and one in the Falkland Islands. In no one of these colonies has the old colonial polity of a Governor, Council, and Assembly been introduced. In no one of them (except New South Wales) has any electoral franchise been granted to the colonists, or any share in the local legislation to their representatives.

“ In all these conquered colonies, the ancient system of internal government remains such as it was at the time of the respective conquests, excepting that by letters-patent, under the Great Seal, a governor and council, appointed by the Crown, have in each of them been authorised to make local laws. In Guiana, indeed, no such letters-patent have been issued, because the ancient Dutch legislature still retains in that colony its ancient forms and powers.

“ In all colonies acquired during the nineteenth century by the occupation of vacant territories, the same system of

* It is not quite clear what colonies were meant. The three colonies—Demerara, Essequibo, and Berbice—which now constitute British Guiana, capitulated in 1803. St. Lucia, another transatlantic dependency, was retaken by the English during the same year, having been previously restored to the French at the peace of Amiens.

† The Cape, with Natal and Kaffraria subsequently acquired.

‡ Mauritius, Hong-Kong, Labuan, and Ceylon? Java and Sumatra were added to the English possessions during the present century, but were subsequently restored to the Dutch.

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internal legislature, by a governor and council appointed by the Crown, has been introduced by the authority of Parliament.

“In colonies so acquired the royal prerogative was competent only to the establishment of systems of civil government, of which a legislature, composed in part, at least, of the representatives of the people, formed a component part. To dispense even for awhile with such a legislature, parliamentary aid was requisite. But in sanctioning that departure from the general type and model of the earlier colonial constitutions, it has been the practice of Parliament to recognise the ancient principle, and to record the purpose of resuming the former constitutional practice, so soon as the causes should have ceased to operate which in each particular case had forbidden the immediate observance of it.”

Within a very recent period, the purpose here referred to has been in several cases carried into effect. Of the colonies acquired in the nineteenth century, those of the Cape of Good Hope, New Zealand, Van Diemen's Land, New South Wales, Victoria, South Australia, and Western Australia have lately had representative legislatures instituted in them.

Before proceeding to the consideration of the different forms of government existing in different colonies, it will be convenient to mention the principal particulars in which their governments are alike. In each of them the supreme administrative power is assigned to a *Governor*, who acts as representative of the Crown, and is appointed, on the advice of the Colonial Secretary, by the Crown, by letters patent under the Great Seal of this kingdom. The governor

regularly communicates with the Secretary of State for the Colonies, and is bound to conform to instructions issued by the latter in his capacity of immediate general delegate of the royal power affecting the colonies.* Where not so bound by instructions, the Governor of a colony has large discretionary powers. He convokes, prorogues, and dissolves the Legislative body, and has universally the power of pronouncing a veto upon its Acts, or of reserving them for the Royal consideration. No Acts of Colonial Legislatures have force until they have received either the assent of the Governor in the Queen's name, or the Royal assent, when reserved and transmitted to this country for consideration. The Governor annually transmits to the Colonial Secretary a Report, which is presented to Parliament, of its finances and general condition.

To the Governor also belongs the supreme power in the colony with respect to the distribution and movement of *troops*; in many cases he is also military commander of the forces.

The chief source of expenditure of this country on account of the colonies is their military protection,

* "The authority of the Home Government over the colonies is exercised mainly in two ways; first, by the appointment of governors; and, secondly, by sanctioning or disallowing measures of the local government, of which these officers are at the head. It is also exercised sometimes, but much more rarely, in prescribing measures for their adoption."—Earl Grey, on Colonial Policy 8vo. 1853.

and includes the transport of troops to and from the colonies, the pay of troops stationed in them, and the cost of barracks and ordnance works. Formerly a large part of this expenditure was borne by several of the colonies,—as by most of those which are now included in the United States, and the West Indian colonies. Some of the colonies—as those of Canada, the Mauritius, and Ceylon—at present contribute to their military expenditure, and in others efforts have been made to reduce the burthen which in this respect now falls on this country.

To the Governor are delegated other prerogative powers in the colony—as those of *pardon*, *remission of fines* to the Crown, and *appointments in the civil service*. Since the expenses of civil government, in most of the colonies, have been provided for by them severally, inhabitants of them have been usually selected by their Governors for offices under the Crown. “It is true,” says Lord Grey, “that these offices, when their value exceeds 200*l.* a year, are in general nominally at the disposal of the Secretary of State, and when vacancies occur can only be filled up by the governors, subject to the confirmation of the Crown, signified by that minister; but, in the majority of cases, the recommendations of the governors are accepted as a matter of course; the patronage, therefore, is in effect exercised by them, and offices are filled up by appointment of colonists.” Important judicial ap-

pointments are, however, filled up from the Bar of this country.

By the exercise of the royal prerogative, a large number of *Bishoprics* have been erected in the colonies and India. Several of these bishoprics have been created by letters patent, and their revenues and jurisdictions are regulated by Acts of Parliament. In other cases, funds have been raised from private sources for the endowment of colonial bishoprics. The nomination of all the colonial bishops is vested in the Crown; and, by statute 59 Geo. III. c. 60, their consecration by the Archbishops of Canterbury and York, and the Bishop of London, is authorized.

In several colonies statutory provision is made for the appropriation of a part of the revenues for *Public Worship*, the proportions in which the sums so appropriated are to be divided among various religious denominations being left to be determined by the Crown.

The authority of the Imperial Parliament is paramount in the colonies, and laws made by the latter repugnant to Acts of Parliament would not have legal force. In many particulars, however, Parliament has abandoned the practice of legislating for the colonies. The most important of the legislative powers of the colonies which are now discharged by them solely is that of *Local Taxation*. By the Act 18 Geo. III. c. 12, passed shortly before the declaration of the independence of the United States, it was declared and

enacted:—"That from and after the passing of this Act, the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatsoever, payable in any of His Majesty's colonies, provinces, and plantations, in North America or the West Indies, except only such duties as it may be expedient to impose for the regulation of commerce; the net produce of such duties to be always paid and applied to and for the use of the colony, province, or plantation in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective General Courts or General Assemblies of such colonies, provinces, or plantations are ordinarily paid and applied." This Act has been styled the Colonial Magna Charta, and its declarations are now considered to be extended to all British colonies which have local legislatures.

When British subjects take possession of a desert country, they must, consistently with their allegiance, do so by public authority, and then the territory becomes vested in the Crown.* In such colonies, acquired by *settlement*, the law of England, so far as it is applicable to an infant colony, comes into force; and in these colonies the Crown has not sole power of legislation. Where, however, colonies have been acquired by cession or conquest, the sole legislative power of the Crown exists and is sufficient for the

* Bowyer on Constitutional Law, ch. iv.

establishment of local legislatures.* In such colonies, also, the municipal laws which existed in them previously to their cession or conquest for the most part remain in force—subject, of course, to the supreme control of Parliament. This rule leads to a considerable diversity in the colonial systems of judicature. To the Judicial Committee of the Privy Council, as has been already mentioned, all appeals from British courts of justice abroad are referrible. By the Act 7 and 8 Vict. c. 69, Her Majesty, by Order in Council, may provide for the admission of “any appeal or appeals to Her Majesty in Council from any judgments, sentences, decrees, or orders of any court of justice within any British colony or possession abroad, although such Court shall not be a Court of Error or Court of Appeal within such colony or possession;” and the Judicial Committee of the Privy Council may proceed to hear and report on appeals without order in council referring them to the committee.

In considering the several methods of government existing in the numerous and widely-extended colonial possessions of the British empire, it will be necessary to adopt some method of classifying them. An account of the government of each of them separately, without classification, would be comparatively uninteresting, and, without continual reference to their geographical position and history, confused and

* See ante, p. 360.

uninstructive. It happens that, notwithstanding the number of the colonies, and the diversity of their circumstances, arising from irregular geographical distribution and varieties of climates and of the condition of their inhabitants, they may be grouped into three classes, each of which is almost completely distinguished from the other two by geographical and political circumstances. The colonial civil governments, according to the proposed classification, are :—

I. Those constituted before the nineteenth century ; all which have representative assemblies. This class includes all the Transatlantic colonies, except Trinidad, St. Lucia, British Guiana, and the Falkland Islands.

II. Those constituted in the nineteenth century, which have *not* elective legislative assemblies. This class includes the colonies excepted from the last class, and all the colonies which are Cisatlantic and east of England, except the Cape and Australasian colonies.*

III. Those constituted in the nineteenth century, which *have* representative institutions—the Cape and Australasian colonies.

I. COLONIAL GOVERNMENTS CONSTITUTED BEFORE THE NINETEENTH CENTURY.

The territories constituted British colonies before the end of the eighteenth century are all Transat-

* The governments of British Guiana and Malta are, to a limited extent, representative.

lantic, and consist of—1, North Atlantic Islands ; 2, North American colonies.

I. *North Atlantic Islands*.—Of these the West Indian colonies are Jamaica, the Leeward, and the Windward Islands, which have all nearly the same form of government.

In *Jamaica* the Legislature is composed of a Governor, a Legislative Council nominated by the Crown, and an Assembly which is elected by the freeholders, and of which the duration is limited to seven years. The colony has for two centuries possessed a representative constitution ; and the Assembly, which is composed of representatives for every parish, not only exercises the ordinary authority of a Legislative body, but performs many of the functions of Executive government. The authority of the Crown is more restricted than elsewhere by various laws and usages.

The Assembly not only has the constitutional power of deciding on the amount of grants to be made for the service of the colony, and the taxes by which they are to be supplied, but is not subject to the regulations usual in other colonies, that every grant shall be for purposes previously recommended by the Governor. Proposals for appropriation of public money may be made by any member of the Assembly, and, consequently, the financial business is not conducted with the regularity which is observed in Eng-

land and those colonies in which the supplies are made in accordance with estimates prepared by responsible executive officers. All the members of the Assembly are *ex-officio* Commissioners of Public Accounts ; and as the Commissioners continue to meet after a prorogation of the Assembly, it is nearly exempt from the constitutional provision against the perpetuation of its power which is established in this country by the royal prerogative of prorogation of Parliament. With respect to financial affairs in Jamaica, the Governor has little substantial authority even of an administrative kind.*

The Legislative Council in Jamaica as in the other West India islands consists of certain administrative and judicial officers who are members *ex-officio*, and some unofficial members—inhabitants of the colony, selected by the Governor and nominated by the Crown. The Council is executive as well as legislative, and constitutionally advises the Governor as his Privy Council.

The Judicature in Jamaica in many respects resembles our own. There are a Court of Chancery and a Court of Common Law, presided over by a Chief Justice who is nominated by the Governor, and is associated with two other Judges. The Assize Courts

* Many of the particulars, given here and elsewhere in this chapter, are compiled from the admirable work of Earl Grey previously cited.

in each county, the Courts of Quarter Sessions presided over by chairmen appointed by the Home Government, and assisted by magistrates, the Courts of Common Pleas for small debts, and the Court of Vice-Admiralty resemble the Courts constituted for similar purposes in England.

Of the government of *Honduras*, which is dependent on that of Jamaica, the local legislative power is in a council elected by the inhabitants.

The governments of the *Leeward Islands*,—Antigua, Dominica, Montserrat, Nevis, St. Christopher, and Tortola,—are united under one general executive government; but each of them has its own Legislative Council and Elective House of Assembly. Antigua is the seat of government, and Bills passed by the Legislature of the other islands are sent by their Lieutenant-Governors to the Governor-in-Chief at Antigua, for his instructions, before assent is given, which is necessary to the validity of the Legislative enactments.

The *Windward Islands*—Barbadoes, Tobago, Grenada, St. Vincent, and St. Lucia—are similarly consolidated under one general executive government, and have each (except St. Lucia) their separate Legislative Councils and Elective Assemblies.

Three remaining North Atlantic insular colonies—the Bahamas, the Bermudas, and Vancouver's Land—have each similarly constituted governments.

2. *North American Colonies*.—In the constitutions above described, the chief defect appears to be the

imperfect separation of executive and legislative functions. The great merit of the governments next to be considered is the more complete manner in which that separation is effected, which, as has been several times insisted upon in the course of this work, is one of the fundamental conditions of good government. The British Colonies of North America—Canada, Nova Scotia, New Brunswick, Prince Edward's Island, and Newfoundland—all possess Elective Assemblies; and in all of them, except Newfoundland, the Parliamentary system is adopted, by which the administrative officers appointed by the chief magistrate are made responsible to the Legislature, and retain office only so long as they can command its confidence. This most important change in the colonial constitutions has been in operation only a few years, and in effect leaves to the Home Government the appointment to none of the chief administrative offices except that of the Governor, whose relation to the Colonial Legislature is like that of the Sovereign to the Parliament in England—principally that of a moderator.

The Governor, in the colonies in which our own Parliamentary system is thus adopted, has an Executive Council distinct from the Council which is a branch of the Legislature. The Executive Council is somewhat analogous to a "Cabinet" in England, but has not so much legislative power. The Governor is in a considerable degree guided by the advice of the

Executive Council, but partly also by his instructions from the Home Government.

In *Canada* by the Act 3 and 4 Vict., c. 35, the two provinces were reunited in one province, within which it was provided that there should be a Legislative Council and Assembly; and Her Majesty, by and with their advice, was enabled to make laws for the province not repugnant to Acts of Parliament intended to extend to Canada. The members of the Legislative Council were to be nominated for life by the Crown, but their seats might be vacated by absence and other causes.* In the Legislative Assembly each province was to have an equal number of representatives elected for a period limited to five years.

The Governor has power to convoke, prorogue, and dissolve the Legislature. Bills passed by it are presented for his assent, which may be at once given or refused; or he may reserve them for the signification of Her Majesty's pleasure. Bills to which the Governor has assented are transmitted to England, and may be disallowed by the Queen in Council within a period of two years after they are received. Bills reserved have no force without the Royal Assent.

The Governor and his Executive Council act for the

* An Act of Parliament of 1854, empowers the Canadian Legislature to change the constitution of the Council so that it may consist of elected or appointed members, to provide for the separate dissolution by the Governor of the Council and Assembly, and to vary the qualification of members of the Assembly.

whole province. Certain specified annual payments were directed to be made out of the colonial revenues for the civil service of the colony. These revenues, and those derived from Crown lands, were to form a Consolidated Fund, which, after the payment of the Civil List just mentioned, was to be appropriated by the Legislature. All money bills and votes were to originate in the Assembly, but money was not to be voted for any purpose not previously recommended by a message from the Governor. By a subsequent Act of 1847, the right of settling this Civil List for Canada was given up by the English Parliament; and Her Majesty was empowered to assent to an Act of the Canadian Legislature, by which the latter provided for the payment of a Civil List and the regulation of the Consolidated Fund of the colony.

The Courts of Upper Canada, by an Act of George IV., received civil jurisdiction over every part of North America not within existing British colonies or territories belonging to the United States.

The colonies of *New Brunswick*, *Nova Scotia*, and *Prince Edward's Island*, are under the general government of the Governor of Canada, from whom their Lieutenant-Governors receive instructions. In each of the three subordinate colonies are a Legislative Council and Elective House of Assembly, by whose advice and consent their respective laws are made. These colonies have the same system of parliamentary responsibility of the Executive which

is adopted in Canada. In the remaining North American colony of *Newfoundland*, that system does not appear to have been yet adopted, but the colony has a Legislative Council and representative House of Assembly. By an Act of Parliament of 1847, the constitution of Newfoundland was established in a form similar to that which prevailed until a recent period in most of the other colonies having representative institutions.

II. COLONIES CONSTITUTED IN THE NINETEENTH CENTURY WHICH HAVE *NOT* REPRESENTATIVE ASSEMBLIES.

The colonies constituted during the nineteenth century, to which Representative Legislatures have not been given, are four of the Transatlantic colonies, and all other British colonies, (except those of the Cape and Australasia,) which are either Cisatlantic—that is, near the east coast of the Atlantic—or are distributed in the hemisphere east of England.

In every colony which has not an Elective Assembly there is a Legislative Council, which generally consists partly of *ex officio* members (certain of the executive officers of Government) and partly of unofficial members, who are some of the principal inhabitants of the colony nominated by the Crown on the recommendation of the Governor. Lord Grey states that the unofficial members are “in the habit of acting with great freedom, and practically express to a considerable

extent the opinion of the class to which they belong. It was my object, while I held the seals of the Colonial Department, without relinquishing the power possessed by the Crown, gradually to bring these legislative bodies more under the influence of the intelligent and educated inhabitants of these colonies. With this view, in one or two cases, the proportion of the unofficial to the official members was augmented, and the practice was everywhere introduced of requiring the whole expenditure to be provided for by ordinances discussed and passed by the Legislative Council; these ordinances being founded on estimates prepared and submitted to the Legislature by the Governor, and published for general information. In general the fixed establishment of the Colonial Governments is provided for by permanent laws, and that part of the expenditure which is of a more fluctuating character by ordinances passed annually; every charge on the colonial revenues being required to have in one form or another the sanction of the Legislature. This regulation was adopted under my instructions in all the colonies to which I am now referring, in place of the very lax and irregular practice previously prevailing in some of them, by which the only authority for a large proportion of their expenditure consisted of instructions given by the Secretary of State with the concurrence of the Treasury. The publicity given to the estimates and accounts of the colonial expenditure, and the rule

that, except in cases of great emergency, the drafts of proposed ordinances should be published before being passed, have enabled the colonists to bring under the consideration of the Governors and the Legislative Councils, and ultimately of the Secretary of State, any objections they have entertained to proposed ordinances or financial arrangements. Every encouragement has been given to them to make known their opinions freely, both to the Local and Home Government ; and the most careful consideration has been given to their views, especially when these have been stated by chambers of commerce or municipal bodies, the advice and assistance of which, in the administration of colonial affairs, are in my judgment of the highest value.”*

The Transatlantic colonies, in which the legislative power is vested in nominated Councils, are Trinidad, St. Lucia, the Falkland Islands and British Guiana. In *Trinidad and St. Lucia* the inhabitants of European origin are but a small fraction of the population, of which a considerable part consists of natives of India and Africa, whose habits and want of education incapacitate them for the discreet and independent exercise of political suffrage. A preparatory step toward the introduction of representative government in these two colonies has been taken by the creation of municipal corporations in both. Trinidad has been divided into wards in which wardens have

* Colonial Policy, p. 31.

been appointed for the performance of local duties, which will gradually devolve on elective municipal bodies as the population increases.

The *Falkland Islands* contain a very small population, and are nearly uninhabitable, on account of the boggy nature of the soil.

It is difficult to determine whether the South American dependency, *British Guiana*, belongs to the second or third of the classes into which the colonial governments have been here divided. The extensive colony of British Guiana comprises Demerara, Essequibo, and Berbice, which were consolidated into one colony in 1831. The laws in force resemble the old Dutch law. The Constitution is peculiar, and vests the general power of legislation in the Governor and a body called the Court of Policy, which is not elective, but consists of an equal number of official and unofficial members. This body has not, however, during the continuance of the Civil List, the power of levying and appropriating taxes; those functions are exercised by a "Combined Court," consisting of the members of the Court of Policy and certain Financial Representatives who are elected by suffrage. The Civil List of the colony has been settled by the Combined Court for a prescribed period, and the remainder of the colonial expenditure is annually sanctioned by that Court. In 1849 an extension took place of the right of suffrage of voters for the "Financial Representatives"

All the separately-constituted African colonies, except that of the Cape, are governed by their respective Governors and nominated Legislative Councils. The Colonial governments in Africa, to the west of the Cape—*Sierra Leone, Gambia, and the Gold Coast*—are, by Acts of Parliament, vested in Governors and Legislative Councils. On the eastern side of Africa are the colonies of *Natal* and the *Mauritius*. The former is a dependency of the Cape colony, and is governed by a Lieutenant-Governor and Council composed exclusively of official members. In the *Mauritius*, the government is under a Governor, Executive Council, and a nominated Legislative Council, composed partly of official and partly of unofficial members: in Port Louis, the chief town, a municipal corporation has been constituted.

Of the Asiatic colonies, that of *Ceylon* resembles the last described: a municipal organization has been commenced by the constitution of officers of roads elected by the householders. In *Hong Kong* the Council consists wholly of official members; and the Governor, in addition to his colonial appointment, holds a commission from the Foreign Office as Plenipotentiary in China.

III. COLONIES CONSTITUTED IN THE NINETEENTH CENTURY HAVING REPRESENTATIVE INSTITUTIONS.

In the Cape and Australasian colonies new Constitutions have been very recently established, by which

those colonies are for the future to be governed by Representative Legislative Assemblies. In the Cape colony the new constitution has been established by the Royal Prerogative; but in the establishment of the Australasian Constitutions the intervention of Parliament was required, as it had previously established other forms of government for those colonies by enactments, which of course the unaided prerogatives of the Crown were not competent to supersede *

The Constitution of the *Cape of Good Hope* has been recently established by orders in Council, and ordinances of the previously existing Colonial Legislature. By letters patent under the Great Seal, dated May 23, 1850, the Queen ordained that there should be within the settlement of the Cape of Good Hope a Parliament to be holden by the Governor, Commander-in-Chief of that settlement. The Parliament was to consist of that officer, a Legislative Council, and a House of Assembly, and was to be constituted in such manner as the Governor and existing Legislative Council should determine, by ordinances which, however, were to provide that the Chief Justice should preside in the Legislative Council, and that the Governor might propose laws and amendments, prescribe the method of procedure with respect to them

* A large part of the following information respecting the constitutions of the Cape and Australia has been derived from ordinances, to authentic copies of which the Author has been liberally and courteously permitted to have access in the Colonial Office. Of some of these documents which have been very lately received, no account appears to have been hitherto published in England.

and money bills, and dissolve the Council and Assembly together, or the Assembly separately. The ordinances were to be ratified, and subject to amendments made by the Queen in Council, before taking effect.

In April 1852, the Legislative Council enacted an ordinance for constituting a Parliament of the colony, and another ordinance for regulating in certain respects the appropriation of its revenues.

By the former of these ordinances the Cape Legislative Council is to consist of the Chief Justice of the colony and fifteen elective members—eight chosen by the western and seven by the eastern districts of the colony. The members are elected in two different portions, a portion being elected every five years, and the tenure of each seat is ten years unless the Council be sooner dissolved.

The House of Assembly is to consist of forty-six members, elected for a period limited to five years. The colony is divided into twenty-two electoral divisions, of which the electors are to be registered. They are qualified to vote at elections both of the Council and of the Assembly.

The Governor may prorogue or dissolve the Council and Assembly, or dissolve the Assembly separately. There must be a session of the Parliament annually. The Colonial Secretary, Attorney-General, Treasurer, and Auditor, may speak, but not vote, in either house. No Bill may be passed appropriating the revenue

except for public services for which the Governor has previously recommended to the Assembly that provisions be made. Bills granting supplies, or imposing taxes, must originate in that house.

Drafts of laws may be transmitted to either House by the Governor, who may also assent to, or refuse to assent to, or reserve for the signification of the Royal pleasure, Bills which have passed the two Houses. The Crown may disallow Acts assented to by the Governor within two years after they are received in England; and Bills reserved for the Royal assent have no force unless such assent be given within two years after their being presented to the Governor.

Each member of either House, usually resident more than ten miles from the place of Assembly, has an allowance of 1*l* per diem while engaged in travelling to and from and attending each session; but the payment is not to be for more than fifty days in one year. The members are also allowed travelling expenses.

By Orders in Council the above-mentioned ordinances were (with some amendments to the first of them) ratified, and finally enacted. The Parliament of the Cape, so constituted, was to have power to amend the provisions of the ordinances. The principal amendments just mentioned provide that the general qualification of the parliamentary suffrage shall be occupation, for twelve months prior to registration, of a tenement of the value of 25*l.*, and afford means by which not only internal improvements of the

Legislature, but its separation into two Legislatures may be hereafter effected. The first of these amendments was intended to increase the number of suffrages of coloured persons ; the second has reference to propositions for the removal of the Legislature from Cape Town to Graham's Town, or the division of the colony into two provinces, with a Legislature in each.*

Of the *Australian Colonies* the Constitutional government is regulated by several Acts of Parliament. The Act 5 and 6 Vict. c. 76, provides for the sale of waste lands belonging to the Crown in those colonies, and that the proceeds of such sale shall be applied to the public service of the colonies in which the lands are sold respectively, and one half at least of the proceeds to conveyance of poor immigrants, under regulations of Privy Council. This Act also provided that there should be established in New South Wales a Legislative Council, of which the duration was limited to five years—one-third of the members to be appointed by the Governor, and the rest elected by suffrage. There were the usual regulations for convocation, prorogation, and dissolution of the council by the Governor, and the giving and withholding of the Royal assent to bills, and the reservation of them for the signification of the Royal pleasure.

By the same Act, district Councils were authorized to make orders and by-laws respecting police, roads, and other local purposes.

* Papers presented to Parliament May 31, 1853.

The Act, "for the better government of Her Majesty's Australian Colonies" (13 and 14 Vic. c. 52), authorizes the establishment of new constitutions in five colonies—New South Wales, Victoria, Van Diemen's Land, South Australia, and Western Australia.

By this Act the district of Port Philip was separated from New South Wales, and constituted the distinct colony of Victoria, which is to have its own Legislature. In each colony a Legislative Council is authorized, of which one-third of the members are appointed by the Crown, and the rest elected by the inhabitants. The establishment of the councils in New South Wales and Victoria is assigned to the existing Council of the former ; in Van Diemen's Land and South Australia, to the existing legislatures of those colonies respectively ; in Western Australia, to those persons who have had hitherto power to make its laws and ordinances, upon petition of one-third of the householders, which petition must assent to the expenses of the Civil establishment being charged on the colony.

The provisions of 5 and 6 Vict. c. 76, and 7 and 8 Vict. c. 74, respecting the appointment of non-elective members of the Council ; its duration, prorogation, and dissolution ; the Royal assent to Bills ; the proposal of drafts of laws, and amendments by the Governor, are extended to the five colonies.

These respective Councils may make laws which are not repugnant to the laws of England, and do not

interfere with the sale, appropriation, and revenue of the Crown lands. The Councils may appropriate, within each colony respectively, the whole of its revenues for public services for which the Governor has previously recommended that provision should be made. In schedules to the Act are specified sums to be paid for certain civil and judicial services out of the revenue of each colony. The Councils may levy customs-duties, but not on articles imported for the supply of Her Majesty's forces, nor contrary to British treaties with foreign powers, nor of a *differential* kind—that is, there must be no difference in the duties on exports of different countries.

The Governor may incorporate districts in which district councils are to have the powers conferred by 5 and 6 Vict. c. 76. The Legislatures may make such alterations as they please in the constitution and duties of the District Councils, and also in the administration of justice and the constitution of Courts of Law and Equity.

The existing Legislative Councils may, with the assent of Her Majesty in Council, alter the constitutions of the Legislatures established by this Act, as to the election of members of the Council, their qualifications and those of the electors, and the division of the Councils into separate legislative chambers.

On petition of inhabitants of territories north of the thirtieth degree of south latitude, Her Majesty may erect them into colonies with similar legislatures.

In accordance with a provision of this Act of Parliament, some of the existing Colonial Legislatures have passed enactments for the alteration of their several constitutions. These enactments have not yet come into force, as they have been reserved for Her Majesty's approval, and their operation is suspended until after the repeal of portions of existing Acts of Parliament. The principal constitutional alterations provided for by the Colonial Legislatures are as follows :—

By the Act of the Legislative Council of *New South Wales*, passed 21 Dec. 1853, reserved for Her Majesty's approval, and entitled "An Act to confer a constitution on New South Wales, and to grant a Civil List to Her Majesty," the Legislature of the colony is proposed to be a *Legislative Council* and *Assembly*. The Legislative Council is to be appointed by the Governor, with the advice of his Executive, and to consist of not fewer than twenty-one members, of whom not less than four-fifths are to be persons not in the civil service. The tenure of seats in the Legislative Council is to be for five years at first, and afterwards for *life*, subject to provisions for vacating the seats by absence, &c., and for altering the constitution. The Assembly is to consist of fifty-four members, elected by the inhabitants of the colony, for a period of five years, subject to the Governor's power of prorogation and dissolution.

Members of the Council are not to sit in the Assembly, nor persons in the civil service, excepting the

Secretary, Treasurer, Auditor-General, Attorney-General, and not more than five others, to be appointed by the Governor, on the advice of the Executive Council.

An important alteration is provided for, respecting the Royal assent to Bills. Those only are to be *reserved* which refer to "Imperial subjects," viz.: allegiance of the colony, naturalization of aliens, treaties with foreign powers, political intercourse with officers of foreign powers or dependencies, military forces and defence, high treason. Respecting all Bills which refer to colonial or municipal affairs, the Governor is to express his assent or dissent at once; and Her Majesty may, with the advice of the Privy Council, send instructions to the Governor respecting assent to Bills on imperial subjects, but "so that such instructions do not in any way fetter the Governor's discretion in giving or refusing Her Majesty's assent to Bills of mere local or municipal concernment." Questions as to what bills relate to imperial subjects may be submitted to the Judicial Committee of the Privy Council. Bills reserved for the Royal assent are not to have force unless it be signified within a limited period.

The appointment to all public offices under Government is to be vested in the Governor, with the advice of the Executive Council, except that some officers are liable to retire on political grounds.

• Subject to the provisions of the Act, the Colonial Legislature is to make laws for the disposal of Crown

lands ; and, notwithstanding any Act of Parliament, may impose customs-duties, not *differential*. In order that a Civil List may be granted to Her Majesty by the spontaneous liberality of the people of the colony, all duties and revenues are to form a Consolidated Fund, which is to be charged with payments for services and purposes mentioned in the schedules of the Act. This Civil List is to be accepted by Her Majesty instead of all Crown revenues. The Legislative Assembly is not to vote the appropriation of revenues to any purposes not previously recommended by the Governor. The provisions of this Act are not to have force until certain repugnant enactments of the Imperial Legislature be repealed, and the management of Crown lands and revenues vested in the colony.

The Act of the Colonial Legislature for establishing a constitution in and for the colony of *Victoria* is very similar to the Act just noticed. Nearly corresponding provisions are made for the constitution of a Legislative Council and Legislative Assembly, but both elective ; for their duration, for five years ; their prorogation and dissolution by the Governor ; the reservation of the Royal approval respecting those Bills only which relate to Imperial affairs ; reference of questions respecting the right to reserve or subsequently disallow colonial acts to the Judicial Committee of the Privy Council ; the appointment to offices by the Governor with the advice of the Executive Council ; the retirement of officers on political grounds ;

customs-duties, Crown lands, revenues and the Civil List; and the postponement of the operations of the Act.

The Legislative Council in Victoria is proposed to consist of thirty-six members, elected for six provinces, and the Assembly of sixty members, elected for thirty-seven districts. Of members of both Houses certain property qualifications are required, which are higher for the former than for the latter. The qualifications of electors of the Council are possession of certain freeholds and leaseholds, or admission to the Bar, university degrees, &c.; the electors of the Assembly are qualified by possessing other freeholds and leaseholds, and certain tenancies. The same persons may be members of both Council and Assembly. Certain executive officers must belong to either the Legislative Council or Assembly; and the accepters of certain offices of profit under the Crown are to vacate their seats, but to be re-eligible.

The Act of the Legislative Council of *South Australia*, "to establish a Parliament in South Australia," differs in several respects from those just noticed. By this Act, which has been also reserved for the Royal approval, the Colonial Parliament is proposed to consist of a Council and Assembly, of which the former is to be nominated by the Crown, and the latter elective. The constitution of the Council may be made elective upon address voted by two-thirds of the members of the Assembly in two successive sessions. The disposal of waste lands by the Colonial

Legislature is subjected to restrictions respecting the length of leases and price of lands sold; of the net revenue of such lands one half at least is to be appropriated for immigration, and the rest to public works and the protection of aborigines. The provisions respecting Bills reserved for the Royal approval, the appointments in the civil service by the Governor, customs-duties, and the postponement of the operation of this Act, are similar to those in the above-mentioned colonial enactments relating to New South Wales and Victoria. A Civil List is provided by a separate Act of the South Australian Legislature.

The Government now established for *New Zealand* by the statute of 1852,* granting a representative constitution to that colony, is in many respects peculiar: in addition to the General Legislature, subordinate Legislatures of Provinces are established under "Superintendents," whose functions distinguish the Constitution of New Zealand from that of every other colony.

For the provincial government of New Zealand, it is divided into six provinces—Auckland, New Plymouth, Wellington, Nelson, Canterbury, and Otago—each of which has its Provincial Council and Superintendent. The electors of the Council are

* 15 and 16 Vict., c. 72. Representative institutions had been granted to New Zealand by Royal Letters-patent, in pursuance of a previous Act of Parliament, but the constitution of Assemblies by that authority was suspended by the Act 11 and 12 Vict., c. 5, and by the late Act another Constitution is finally substituted.

qualified by the possession of certain freeholds, leaseholds, or tenancies, and also elect the Superintendent: but the election of the latter may be disallowed by the Governor of the colony. Each Provincial Council is elected for four years, subject to dissolution by the Governor, sits annually, and is convoked and prorogued by the Superintendent of the province. He and the Provincial Council may make laws for the province, not repugnant to the laws of England. For certain purposes, however, the Provincial Council may not legislate. These relate to Customs-Duties, the alteration of Law Courts except those of summary jurisdiction, Currency, Weights and Measures, the Post-Office, Bankruptcy and Insolvency, Light-houses, Shipping Dues, Marriage, Lands of the Crown and Aborigines, Disabilities peculiar to native races, alteration of Criminal Laws except those relating to offences punishable summarily, Inheritance of Property and Wills. The revenue must be appropriated by the Council for purposes previously recommended by the Superintendent, to whom all Bills passed by the Council are presented. He may, according to his discretion, subject to the instructions of the Governor, assent to or dissent from such Bills, or reserve them for the Governor's approval, which must be expressed within three months after the Bills are so reserved; otherwise they have no force. Also Bills assented to by the

Superintendent may be disallowed by the Governor within three months after he receives them.

The *General Assembly* of New Zealand consists of the Governor, Legislative Council, and House of Representatives. The Legislative Council are nominated by the Crown, and may hold their seats for life, subject to vacation of them by resignation, absence, and some other disqualifying causes. The House of Representatives continues for five years, unless the General Assembly be sooner dissolved, and is elected by voters qualified similarly to the electors of Provincial Councils. There are the usual provisions for the convocation, prorogation, and dissolution of the Assembly by the Governor, and his power to give or withhold assent to Bills passed, or to reserve them for the approval of Her Majesty, who may also disallow, within a limited period, Bills assented to by the Governor.

The appropriation of revenue must be only for services recommended to the House of Representatives by the Governor. The Assembly may levy customs-duties, but not on articles imported for Her Majesty's forces, nor contrary to treaties, &c. Certain civil and judicial services specified in a schedule are to be paid out of the colonial revenue, but the General Assembly may alter the items of the schedule, subject to Her Majesty's approval with respect to the Governor's salary and the sums described for

“native purposes.” The rest of the colonial revenue may be appropriated by the General Assembly, and the unappropriated surplus is to be divided among the Provinces proportionably to their several contributions to the gross revenue. The parts so divided may be appropriated by the Provincial Councils for provincial purposes.

Power is given to the General Assembly to alter the electoral districts for electing the House of Representatives. The number and mode of election of its members, their qualifications, and those of the electors, may be similarly altered by Bill, which, however, must be reserved for Her Majesty's assent, and laid before Parliament thirty days before such assent is given. The General Assembly may also constitute new provinces, and alter the constitution of the Provincial Councils by Bill reserved for Her Majesty's assent.

Municipal Corporations may be established by Her Majesty in the colony, with all or any of the statutory powers of Municipal Corporations in England. Her Majesty may also, by Letters Patent, provide for the maintenance of the laws of the aborigines and their self-government, notwithstanding any law of England or the colony. Rights to lands of the natives are not to be acquired by any one but Her Majesty, or those authorized by her.

The General Assembly may make laws, subject to

the provisions mentioned, for the disposal, &c., of waste lands of the Crown, or those duly acquired from the natives. Upon all sales of waste lands, one-fourth of the proceeds is payable to the New Zealand Company till their debt is extinguished. The power of the General Assembly is restricted with respect to disposal of land in some provinces, including land of the Canterbury Association. That association may transfer its powers to the Province of Canterbury.

All the colonies which have civil government subject immediately to that of Great Britain are included in the foregoing description. There are, besides, some settlements which are dependencies of these colonies, and also a few stations (Gibraltar, Malta, St. Helena, Heligoland, and Ascension Island), which have not civil government locally supreme. Of these stations, the three former are held principally as garrisons, but have separate establishments of civil judicature. Ascension and Heligoland are merely small depôts under the charge of naval officers. The power of legislation in Gibraltar is vested in the Governor alone, subject, of course, to the approval of the Home Government. In Malta and St. Helena, which are not so exclusively military possessions, the Governors are assisted by Councils. In the former colony an important change in the government has been made during the last few years, the principle of representation in a modified form having been intro-

duced by the Queen's commission to the Governor. Extensive powers are reserved to the Crown on account of the importance of Malta as a garrison ; but subject to provisions for its protection in times of danger, a Council partly elected by the inhabitants has been constituted with powers of civil legislation.

If the extension of the self-government of the British Colonies, which has recently taken place, be candidly considered, it seems hardly possible to maintain that Great Britain covetously withholds from her dependencies participation of the freedom which she herself enjoys. Doubtless, the errors formerly committed in colonial government were neither few nor small. Doubtless, by the faults and neglect of the Home Government grievous injuries, and in some cases great oppression, were formerly suffered by the colonists. But to assert that the Central Government is despotic, is a mere abuse of terms. It may safely be asserted to be a principle of modern British legislation to transfer to the colonies all the responsibility of government, of which they can responsibly undertake the duties.

The reciprocal obligations of the Colonies and the Central Government are the subject of one of the most interesting of all political inquiries. Particular applications of the rules of colonial government must obviously be for the most part matters of special, not of general investigation ; but the fundamental nature of

the colonial relation—the moral principle on which it is established may be comprehensively considered. The primary question, in an inquiry respecting the rules of colonial government, must be this—why does the colonial relation subsist at all?—why do not the emigrants from the old country constitute independent communities, such as were the old Greek colonies?

The general answer to the question is, of course, that the colonial relation, like every other social relation, must be morally based on a system of reciprocal obligation. We have, therefore, to consider what the obligation of colonial union is; but before doing so, it may be well to state one thing which it is not. It is not a filial obligation on the part of the colonies, not a parental obligation on the part of the Central Government. The phrase “mother-country” applied to a supreme State in reference to its dependencies is not merely inexact—it is mischievous. Sentimental and metaphorical expressions are always suspicious in politics, for they are generally either the resource of those who cannot think and express themselves clearly, or the mask of those who would disguise unjust and despotic purposes. The idea that the American colonies acted as disobedient children—absurd as the notion now appears—had, I am satisfied, considerable influence in confirming this country in the course of obstinate injustice, of which the result was the independence of the United States. I have already endeavoured

to prove that in no proper sense is constitutional government, "paternal,"* and in exactly the same way it may be shown that the relation of a country to its colonies is not that of a mother to her children. Wherever the colonial relation, properly so called, exists at all, it exists between communities containing adult members, capable of understanding and discharging—and responsible for the discharge of civil duties. The filial duty of obedience exists only for those who are incapable of self-government.

All free government, it has been here several times contended, is a matter of compact. To deny this is surely tantamount to denying that the governors and the governed are bound the former to the latter—and that the governed are mutually bound to each other—by any reciprocal political obligations whatever. For wherever reciprocal obligations exist they must constitute an expressed or implied compact. But if there be no such obligations the government is strictly arbitrary, that is, in no manner responsible to the governed. Whether, even under the most despotic rulers of the most abject people, a purely arbitrary government were ever really established, is questionable; at all events its nature is not within the scope of this inquiry.

The principal distinction of social compacts is between those which form the basis of national and international government respectively. Those who

* Chapter II.

submit to a national government agree to submit *generally* to the rules of their legislature, subject, of course, to the general constitutional control of the nation: but in the relations of communities nationally independent, each new rule of government affecting both must be made the subject of direct and special stipulation. Now, with reference to the social compact on which colonial government is founded, it appears to hold a middle rank between national and international governments—to partake partly of the nature of both. Many of the rights of a colony to self-government are analogous to those of a local municipality at home. “Complete freedom,” it was said in a former chapter,* “consists in the possession by each individual, and each community, of independence in all actions which they can and will respectively perform without interfering with their neighbours, and participation to the extent of their responsibility in their common government.” So that it can hardly be denied, that if a colony be capable of self-government, it ought to extend to all actions which do not affect the Imperial interests. But, on the other hand, there is this wide distinction between local municipalities at home and the colonies, that the former do, and the latter do not, contribute to the revenues, and participate in the regulation of the common government. Consequently, that general submission to the acts and participation in the benefits of

* Chapter XXXV.

the Central Government, which are properly required of and by local municipalities, cannot be fairly required of and by the colonies; for it is obviously unjust that they should be subject to the operation of rules, which they have no share in making, or participate in benefits, to the attainment of which they have not contributed. It seems, therefore, to follow, that the extension of those rules and benefits to the colonies must be based on special stipulations with them.

An objection to this principle may be urged, that treaties are essentially contracts between sovereign powers—that is, powers neither of which is subject to the other: that, therefore, so long as the sovereignty of the supreme State continues, the method of legislation by direct stipulation between it and its colonies cannot obtain. The objection is, however, in a great degree, technical; for it is clear that the governments of the colonies and the supreme State may and do enter into virtual agreements respecting affairs mutually affecting them. For instance, the protection of the colonies from external aggression by the military power of England, the exemption of military supplies from colonial customs-duties, the appropriation of part of the colonial revenues to the purposes of emigration, the selection of proper emigrants, and regulation of emigrant ships, the expenses of those services undertaken by the supreme State, have been

the subject of such agreements, more or less directly made. In fact, the assent of the Governor of a colony to any act of its Legislature which affects Imperial interests, is a ratification of a compact made between the Colony and the supreme State. It may be added, that in this respect the control which the supreme State exercises in the legislation of colonies, by the Governor's powers of veto, and suggesting amendments to colonial Bills and the Royal power of subsequently disallowing them, is founded on the obvious principle of justice, which requires that the parties bound by a compact shall have mutually assented to it.

A few words remain to be added respecting the extent of the social compact on which colonial government is founded. Every human compact may be considered to have a threefold limit with respect to the *subject-matters*, — the *persons*, —and the *period* to which it extends. The subject-matters of the compact between the supreme State and the Colony, obviously, may be all those over which both parties can properly exercise political power. It has been sometimes contended, that the sole and absolute dominion over colonial territories ought to belong to the persons who, from time to time, inhabit them. Thus it has been contended respecting New South Wales,* “that the revenue

* Remonstrance against the Act of Parliament 13 and 14 Vict., c. 59, by the Legislative Council. April 29, 1851.

arising from the public lands, derived as it is mainly from the value imparted to them by the labour and capital of the people of this colony, is as much their property as the ordinary revenue." This conclusion would be just, if it were the fact that all the value of the colonial lands has been imparted to them by the labour and capital of the people of the colony: but a considerable part of that value has been otherwise imparted. "These lands," says Lord Grey on the contrary, "constitute a vast estate which has been acquired, and to which all the value it possesses has been given, by the very large expense which has been incurred by the mother-country in establishing, maintaining, and protecting its colonies. This estate the Crown holds as a trustee for the benefit of all its subjects, not merely of the few thousands who may at this moment inhabit a particular colony; but of the whole British people, whether resident at home or in the colonies." The truth appears to lie between these opposite statements. Neither the colonists nor this country alone have imparted to the waste lands "all the value" they possess, but have both contributed to give them value. Both, therefore, have a partnership share in them, which ought to be duly allowed for in adjusting the balance of obligations between the two countries.

With respect to the extent of the compact this principle also applies—that it binds not only those who originally enter into it, but those also who sub-

sequently acquiesce in it. Those who freely participate in the general benefits of any institution, public or private, are obviously bound to conform to its valid rules. The emigrant who voluntarily settles in a colony—the alien who becomes domiciled in a foreign land, virtually adopt the laws of the country of their choice, and assent to its government. This rule, has, of course, exceptions. There are rights so inherent to every man—so essentially inalienable that they cannot be lawfully transferred by compact. For example, no consideration whatever would render morally obligatory a compact to perpetuate slavery in a colony. To take another possible instance relating to colonial government, the transportation of criminals might be effected in a manner so utterly ruinous to morals and prosperity of the colonies—their social existence might be so endangered by an overwhelming flood of crime—that their free inhabitants would be justified in self-defence in resisting the infliction upon them of so great an evil. But short of these extreme cases none can be conceived of laws of colonial government, to which both the supreme State and the Colony are not bound to conform until those laws be constitutionally altered.

The compact between the supreme State and the Colony may, like every other lasting human compact, be justly abrogated by non-fulfilment—by mutual agreement—by expiration of the compact. Thus, generally, a total violation of the compact on the one

side frees the other from its obligations: in this manner the United States of America were freed from the obligation of allegiance to the English Crown. Or again, the colonial compact might be dissolved by the incapacity of either party to fulfil it: thus, in the case of the loss of sovereignty by the supreme State, the colony would be clearly released from its allegiance, and would probably have to defend itself against one of those spoliations, which are termed by euphemism adjustments of the "balance of power." The remaining ways in which the compact can come to an end are, by the final attainments of its purposes, or by mutual agreement of the contracting parties. There is a period in the history of a colony when the purposes for which it was originally instituted are accomplished—when the supreme State has received an equivalent return for the care and wealth which she bestowed in founding and establishing the colony. We cannot see so far into futurity as to determine whether the relation of Great Britain to her colonies will thus come to an end. We may rather hope that their connection will be continued by continual interchange of benefits; that remote generations of the British people, distributed over the fairest portions of the earth, will long remain closely united by mutual interests and affections—the ties of kindred and their common liberty, language, and religion.

CHAPTER XXXVIII.

CONCLUSION.

It has been the chief purpose of the preceding Commentary on the British Government to examine the relations between its various parts—to exhibit the system of responsibility and mutual control, by which each civil institution is invested with power adequate for the exercise of its jurisdiction, and is restrained from exceeding it.

The whole scheme of the Constitution is one of mutual restraint; the very essence of British Government consists in this—that none of its institutions is entirely independent; the very life of the Commonwealth is its freedom from all absolute human authority. We have seen how admirably each branch of the Legislature is thus adapted for its purposes, and protected from encroachment upon its powers. By the Royal prerogatives of summoning and dissolving successive Parliaments, they are restrained from attempts to perpetuate their existence; while, on the other hand, the dependence of the Executive on the Legislature for supplies of money secures the regular convocation of the latter, and

the responsibility of the Executive to it. The independence of the two Houses of Parliament is maintained by the separate authority of each to annul the legislative measures of the other, while the predominant influence of the elective assembly is secured by its right of initiating all Bills affecting the public revenue. Again, the House of Lords is, by its tenure of power, rendered independent of the immediate influence of popular impulses, and yet, by the Royal prerogative of creating peers is, like the other powers of government, ultimately amenable to the national authority.

When we considered the constitution of the Judicial power, we found it included in the same system of reciprocal responsibilities. The power of the Judges, modified as it is by that of Juries, cannot be made an instrument of political oppression. Again, the responsibility of the Judicial to the Legislative power is secured by the provision for the removal of a Judge on the address of the Houses of Parliament, in the possible case of illegal exercise of his powers. On the other hand, the incorruptibility of the Judges, and their independence of political and popular influence, are secured by the manner of their nomination; and so highly does the theory of the Constitution rank their authority, that it extends even to the restraint of illegal exercise of the Royal prerogative or parliamentary privileges.

We have seen further, how the uniform and just administration of the Law in the Local Courts is provided for, by their subordination to the superior tribunals. We have seen, too, how the powers of local government are freely exercised by provincial and municipal institutions, while those bodies are by various methods of procedure rendered amenable to law for neglect of their duties, or misuse of their powers.

Now it is this relative adjustment of the powers of government which makes the British Constitution the real, living, substantial thing it is. It is not a mere theory. It is not a mere declaration of the Rights of Man. It is not a Tanzimat ordained by a liberal potentate, and revocable by an illiberal successor. It is not a Charte conceded by despotism in the day of weakness and annulled in the day of power. It is a vital reality, and its vital principle is this—that the laws of England trust no man with independent power.

The merits and defects of British government, as it now exists, are so distinctly manifested, that there need be little hesitation in speaking confidently respecting them. With respect to domestic government, we have to reckon the integrity of the Executive Government and the House of Lords on one side of the account—on the other the corrupt system of Parliamentary elections, and the consequent deterioration of the House of Commons. That favour and

partiality do not influence English Courts of Justice no one denies. That the functions of the Executive departments are honestly discharged is not questioned. That the statesmen who successively hold the highest political offices, obtain them by ability and energy, are eminent for intellectual attainments, are men of unimpeachable personal integrity,—would be as freely acknowledged if the pernicious system of party government did not induce a habit of disparaging political opponents. But with respect to the House of Commons, it is not even pretended that the method of election is pure, or that the resolutions of that assembly are determined only by patriotic motives. There is now no such thing in this country as government by Court favouritism or a camarilla: but that private influences are brought to bear on the House of Commons is not denied. The canvassing of members of that assembly is frequently conducted by means of printed circulars, and the boast of various commercial and other classes having interests opposed to those of the nation, that they are secure of specified numbers of Parliamentary votes is publicly avowed. Yet this solicitation of representatives is more injurious to legislation than a system of Court favouritism: for while the House of Commons was possessed of public virtue, and the favourites few in number, the corruption of the latter was easily detected, and was kept in check by the

energy and independence of the former. But when the case is reversed,* and when the officers of the Crown are actuated by patriotic, and a large number of the representatives by selfish purposes, it is apparent that the struggle for improvement of the laws is far more hopeless. We see, sessions after sessions, Parliament after Parliament, the House of Commons rejecting or mutilating Bills for the reformation of notorious abuses, and we know that the carefully concerted and steadily maintained opposition proceeds from regard for private interests. In the House of Commons at present an overwhelming influence is given to small corruptible or coercible constituencies : and an assembly so constituted will not pass self-denying ordinances. The fear of public indignation will, indeed, sometimes prevent it from actively opposing the public benefit, but every excuse for inaction, every opportunity of paralyzing patriotic energy, will be eagerly seized upon.

The momentous importance of this subject will be apparent if we adequately estimate the effects which the corruption of rulers has upon the destinies of the people subject to their government. If we look back on the records of perished nations and fallen empires we shall find that their ruin has ever proceeded from within. There is no instance in the history of the world of the overthrow of an uncorrupted government. Nineveh, Thebes—why are their high places

desolate? Athens, Rome—why is their glory departed? Their ports were once thronged by navies laden with rich freights; their marts were stored with precious merchandize; their streets were alive with the hum of busy industry; their artificers wrought the products of innumerable useful arts, and were supported by a vast agricultural population, with whom they exchanged the fruits of their industry; their architects reared gorgeous palaces, stupendous pyramids, beautiful temples, magnificent theatres, and baths and aqueducts which are yet wonders of the world. The walls of their edifices were clothed with sculptures of living marble; their tragic muse sang noble strains to audiences rapt with sympathetic fervour; and as the voice of the orator resounded in eloquence unsurpassed through the Forum, the hearts of the people thrilled with noble and heroic aspirations. Why are these great cities silent now—their marts and streets and havens deserted—the work of their artificers ceased, and the wonted industry of their husbandmen relinquished? Why are their edifices crumbling ruins, and their sculptures the spoil of foreign invasion? Why is their Muse silent, and the seats of the amphitheatre broken? Why no longer the patriot orator inspires the patriot people? By the national corruption they wrought their own chains, and then the hand of Despotism did but fasten them on.

The Campania of Italy was once a district celebrated for its fertility. Where once were thriving towns, a numerous industrious population, fruitful fields and rich pastures, all is now parched desert, or marshy plain poisoned by malaria which a few miserable herdsmen scarce survive. In Greece and Egypt are regions fair and wide, which once supported by their abundance myriads of the human race in plenty and comfort; and in those regions now a few scattered peasants scarcely wring from the soil enough to keep them from starvation. . . . Wherever throughout the world are seats of fallen empires, history teaches the same lesson of the influence of civil government on human happiness. The beneficent provisions of Nature in those regions are unchanged. She opens her hand to scatter blessings still, and only Man is changed.

The great enemies of social happiness are Political and Social Depravity; and these two are almost inseparably connected. It can rarely happen that permanently a virtuous people shall have corrupt rulers, or a licentious people be otherwise than licentiously governed. The conformity between political and popular morality may not always be exact, for the causes which influence the national welfare have rather a *dynamical* than a *statical* operation—that is, their effects are not immediate, but gradual. But of this history assures us, that the most effectual way for a nation to secure wise and virtuous rulers is to

be wise and virtuous itself. Had the English nation well understood this truth, it would not have suffered, as it has, from the tyranny and profligacy which characterized our history at the conclusion of the Stuart dynasty, and for a long period of the Hanoverian. Then princes and people rivalled each other in heartlessness and the turpitude of their morals. Similar was the degradation of France, which produced her great Revolution; similar, in fact, the depravity of all Europe during the last century. Of this depravity all Europe is now paying the penalty—in one place by disaffection and treason, in another by depopulation—in England by hideous *pauperism*, that national disgrace, which is too certainly our reproach among the nations. Do we suppose that this monster, Pauperism, is a necessary and unavoidable evil? Or do we at least understand, that if the industry of the nation be repressed by laws which violate the truths of political economy, that if the poor be neglected and uneducated, that if the wealth of the country be lavished in its “just and necessary” wars, it must of necessity be impoverished?

Incomparably the most momentous question of English politics now is the remedy of the pauperism and depravity of the very poor. Why are our streets thronged by miserable mendicants—why the vile wynds and courts and alleys with starving half-naked outcasts? Why do the oft-repulsed applicants clamour

at the doors of the huge crowded workhouses for admission, and why do men now "break into gaol?" Why is the eye of the poor sempstress dimmed, and her emaciated hand tremulous with excessive toil? Why are the streets thronged in the bitter winter nights with wretched women, the victims of want as often as of vice—whose hollow laughter prosperous Respectability hears indignant? Why is the artizan at work so hard and so long—rising up early and late taking rest, and eating the bread of carefulness—and is so thin and wan and poorly clad? Why are his little children forced to the workshop to help him fight the battle against starvation, and why are they defrauded of their rights—the tender nurture and artless joys of childhood? Why do penury and want and woe go stalking about our cities as though we suffered the horrors of siege? Are these sore evils the inevitable lot of the English people? Surely they are industrious, intellectual, and frugal. Surely the soil is fruitful, the earth richly stored with wealth. Surely the bounties of Nature are poured upon the land with unstinting hand. Surely we were not created for these evils. They are not inevitable. *God giveth abundance; and Pauperism is the work of man.*

Nor are the uneducated poor the only victims of the evils of our social system. Let us ascend higher in the social scale, and inquire why the poor scholar who racks his brains with midnight toil, suffers all

the miseries of shifty indigence, rendered additionally painful by taste and faculties refined by education? Why are some, the wisest, the worthiest of the nation, condemned to forced idleness, or to cruel indignities in supplicating for ill-requited employment. Of no English class are the lives more continually tragical histories of silent misery. No class suffers more pitiably from the oppressor's wrong, the poor man's contumely, and the spurns that patient merit of the unworthy takes. Men excelling in intellect, virtue, and learning—all that is the real worth of a man—men whose attainments would in a well-ordered social system be highly valued, in ours suffer more undeserved neglect and oppression than any of their fellow-victims of plutocracy.

Admirable as is the British Constitution, it will be time enough to deem it perfect when these social evils are remedied, or at least when legislative power is confided to those only who are competent to investigate, and earnest to apply the remedies. The national sufferings now are the consequences of a long course of national vices—mad waste of life and wealth in war—criminal neglect of the moral and physical condition of the poor—foolish, spendthrift, selfish laws. The diseases are of long duration, and therefore do not admit of instantaneous cure. Yet as they result from human error, and the body is still sound, they are curable. Even already the

prospect of a better future opens before us ; of a time when the horrors of pauperism shall cease ; when the worker shall find profitable labour and have the rights of a Christian man, when his children shall be duly taught and tended, when intellectual worth shall be cherished by the nation, when the whole people shall be fellow-helpers, when England shall be a Commonwealth in very deed.

This is the great task set before us as a nation—to cure, by God's aid, the sores which fester on the body politic, to fulfil our profession of Christianity, and by example to teach the whole world how it may be happier and better. A glorious task ! There is none worthier of the noblest, mightiest energies of man. The memories of the wise and good of past ages who strove so well for British liberties, plead for its achievement. The present sufferings of myriads of mankind plead for its achievement. The future interests of unborn generations plead for its achievement. Its achievement is sure, the aid of that Power and Wisdom being vouchsafed, by which alone *peace and happiness, truth and justice, religion and piety may be established among us for all generations.*

THE END.

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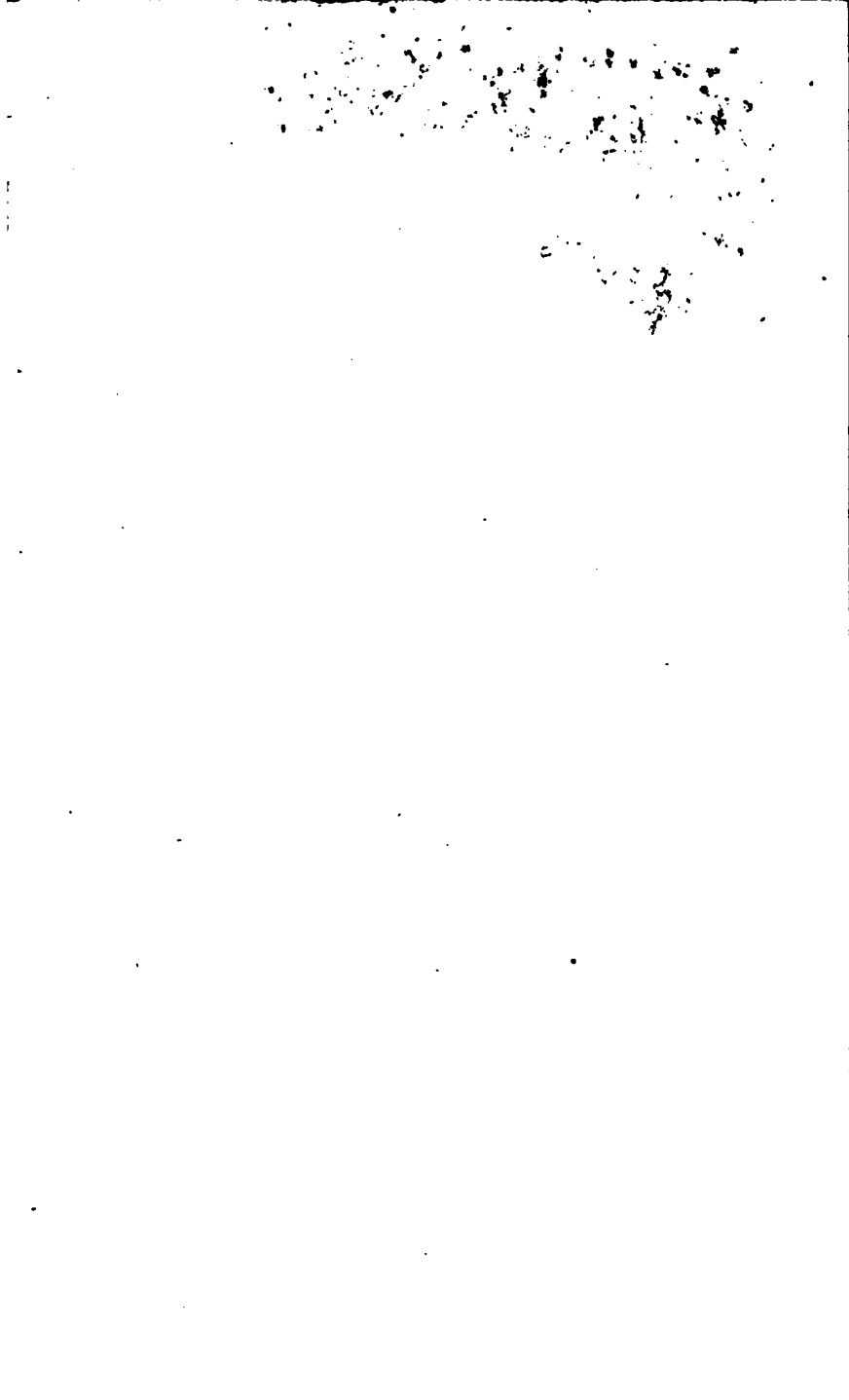
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